

Exhibit 1

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: center;">1</p> <p style="text-align: center;">UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA SAN FRANCISCO DIVISION</p> <p>IN RE DIAMOND FOODS, INC.,) SECURITIES LITIGATION))) CASE NO. 11-cv-05386-WHA))) This Document Relates to:)) All Actions.))</p> <p style="text-align: center;">30(b)(6) DEPOSITION OF GEORGE W. NEVILLE</p> <p style="text-align: center;">April 3, 2013 9:04 a.m.</p> <p style="text-align: center;">Lieff, Cabraser, Heimann & Bernstein, LLP 275 Battery Street, 29th Floor San Francisco, California 94111</p> <p style="text-align: center;">Catherine A. Ryan, RMR, CRR, CSR No. 8239</p>	<p style="text-align: center;">3</p> <p>1 APPEARANCES (Continued)</p> <p>2</p> <p>3 For the Defendant Steven Neil:</p> <p>4 HOGAN LOVELLS US LLP</p> <p>5 BY: AVI DANIEL ROSENBLIT, ESQ.</p> <p>6 3 Embarcadero Center, Suite 1500</p> <p>7 San Francisco, California 94111</p> <p>8 415.374.2314</p> <p>9 415.374.2499 Fax</p> <p>10 avi.rosenblit@hoganlovells.com</p> <p>11 (Mr. Rosenblit was not present at the commencement</p> <p>12 of the deposition proceedings.)</p> <p>13</p> <p>14 Also Present:</p> <p>15</p> <p>16 Videographer:</p> <p>17</p> <p>18 NANCY KARP, ESQUIRE DEPOSITION SOLUTIONS</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: center;">2</p> <p>1 APPEARANCES OF COUNSEL</p> <p>2</p> <p>3 For the Lead Plaintiff:</p> <p>4 CHITWOOD HARLEY HARNES</p> <p>5 BY: JOHN F. HARNES., ESQ.</p> <p>6 1350 Broadway, Suite 908</p> <p>7 New York, New York 10018</p> <p>8 917.595.4600</p> <p>9 jfharnes@chitwoodlaw.com</p> <p>10</p> <p>11 BY: ZE'EVA KUSHNER BANKS, ESQ.</p> <p>12 2300 Promenade II</p> <p>13 1230 Peachtree Street</p> <p>14 Atlanta, Georgia 30309</p> <p>15 404.873.3900</p> <p>16 404.876.4476 Fax</p> <p>17 zbanks@chitwoodlaw.com</p> <p>18</p> <p>19 For the Defendant Diamond Foods:</p> <p>20 FENWICK & WEST, LLP</p> <p>21 BY: JENNIFER C. BRETAN, ESQ.</p> <p>22 MARIE BAFUS, ESQ.</p> <p>23 555 California Street, 12th Floor</p> <p>24 San Francisco, California 94104</p> <p>25 415.875.2412 (Ms. Bretan)</p> <p>415.875.2371 (Ms. Bafus)</p> <p>415.281.1350 Fax</p> <p>jbretan@fenwick.com</p> <p>mbafus@fenwick.com</p> <p>For the Defendant Michael Mendes:</p> <p>SIDLEY AUSTIN, LLP</p> <p>BY: ROBERT B. MARTIN, III, ESQ.</p> <p>555 California Street, 12th Floor</p> <p>San Francisco, California 94104</p> <p>415.772.7443</p> <p>415.772.4000 Fax</p> <p>rbmartin@sidley.com</p> <p>//</p>	<p style="text-align: center;">4</p> <p>1 INDEX OF EXAMINATION</p> <p>2</p> <p>3 WITNESS: GEORGE W. NEVILLE</p> <p>4 EXAMINATION PAGE</p> <p>5 By Ms. Bretan 10</p> <p>6 By Mr. Martin 200</p> <p>7 By Ms. Bretan 203</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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5	<p>1 INDEX TO EXHIBITS</p> <p>2 Exhibit Description Page</p> <p>3 Exhibit 1 "Defendant Diamond Foods, Inc.'s 11 Amended Notice of Deposition of Lead 4 Plaintiff Mississippi Public Employees' Retirement System Pursuant 5 to Federal Rules of Civil Procedure 26 and 30(b)(6)" and attachments; 5 pages</p> <p>6 Exhibit 2 "Letter on the letterhead of Chitwood 31 & Harley LLP dated December 3, 2004"; Bates MSPERS 020244 - MSPERS 020255</p> <p>8 Exhibit 3 "Notice of Motion and Motion of the 40 Mississippi Public Employees' 9 Retirement System for Consolidation and Appointment of Lead Plaintiff; 10 Memorandum of Points and Authorities in Support Thereof; 34 pages</p> <p>11 Exhibit 4 "Declaration of James M. Wilson, Jr. 49 in Support of Motion of the 12 Mississippi Public Employees' 13 Retirement System for Consolidation and Appointment of Lead Plaintiff" and 14 attachments; 14 page</p> <p>15 Exhibit 5 "Court Questionnaire to Lead-Plaintiff 65 Candidates"; 16 pages</p> <p>16 Exhibit 6 "Memorandum in Further Support of the 78 Motion of Mississippi Public 17 Employees' Retirement System for 18 Appointment as Lead Plaintiff and in 19 Opposition to the Competing Motions"; 20 16 pages</p> <p>21 Exhibit 7 Letter on the letterhead of the State 82 of Mississippi, Jim Hood, Attorney 22 General, dated March 5, 2012, "Re: In re Diamond Foods, Inc. Securities 23 Litigation, No. 11-CV-05386 (WHA)" and 24 attachments; 13 pages</p> <p>25 Exhibit 8 "Order Appointing Lead Plaintiff"; 13 96 pages</p> <p>25 //</p>	7	<p>1 INDEX (Continued)</p> <p>2 INDEX TO EXHIBITS</p> <p>3 Exhibit Description Page</p> <p>4 Exhibit 20 "Lead Plaintiff's Initial 155 Disclosures"; 31 pages</p> <p>5 Exhibit 21 "Lead Plaintiff's Amended Initial 157 Disclosures"; 4 pages</p> <p>6 Exhibit 22 "Lead Plaintiff Mississippi Public 160 Employees' Retirement System's 7 Responses and Objections to Defendant 8 Diamond Foods, Inc.'s First Request 9 for Production of Documents" and "Exhibit A"; 25 pages</p> <p>10 Exhibit 23 "Lead Plaintiff Mississippi Public 167 Employees' Retirement System's 11 Responses and Objections to Defendant 12 Diamond Foods, Inc.'s First Set of 13 Interrogatories" and "Verification"; 12 pages</p> <p>14 Exhibit 24 "Lead Plaintiff Mississippi Public 172 Employees' Retirement System's 15 Supplemental Responses and Objections to Defendant Diamond Foods, Inc.'s 16 First Set of Interrogatories"; 6 pages</p> <p>17 Exhibit 25 "Diamond Foods Provides Update on 178 Pringles Transaction"; Bates MSPERS 001505 - MSPERS 001506</p> <p>18 Exhibit 26 "Diamond Foods Announces Audit 180 Committee Investigation Findings"; Bates MSPERS 001511 - MSPERS 001512</p> <p>20 Exhibit 27 "Notice of Motion and Motion for Class 183 Certification; Memorandum of Points 21 and Authorities in Support Thereof"; 30 pages</p> <p>22 Exhibit 28 "Declaration of John F. Harnes in 184 Support of Lead Plaintiff's Motion for 24 Class Certification" and attachments; 7 pages</p> <p>25</p>
6	<p>1 INDEX (Continued)</p> <p>2 INDEX TO EXHIBITS</p> <p>3 Exhibit Description Page</p> <p>4 Exhibit 9 "Notice of Motion and Motion of Lead 97 Plaintiff Mississippi Public 5 Employees' Retirement System for Appointment and Approval of Lead and 6 Local Counsel; Memorandum of Points and Authorities in Support Thereof"; 7 10 pages</p> <p>8 Exhibit 10 "Retention Agreement"; Bates MSPERS 98 007130 - MSPERS 007137</p> <p>9 Exhibit 11 "Order Appointing Class Counsel"; 2 107 pages</p> <p>10 Exhibit 12 "Mississippi Legislature, House Bill 111 11 No. 211 (As Sent to Governor)"; 36 pages</p> <p>12 Exhibit 13 "Mississippi Legislature 2012 Regular 121 Session House Bill 211"; 3 pages</p> <p>14 Exhibit 14 Email series dated November 08, 2011, 127 "Subject: Fw: Victories in Kentucky 15 and Mississippi!"; Bates MSPERS 009902 - MSPERS 009903</p> <p>16 Exhibit 15 "OpenSecrets.org, Democratic Attorneys 129 General Assn: Top Contributors, 2004 Cycle"; 5 pages</p> <p>17 Exhibit 16 "OpenSecrets.org Democratic Attorneys 135 General Assn: Donor Search"; 16 pages</p> <p>18 Exhibit 17 "OpenSecrets.org, Democratic Attorneys 141 General Assn: Expenditures, 2004 21 Cycle"; 3 pages</p> <p>22 Exhibit 18 "Candidate Report of 2007, Receipts 144 and Disbursements"; 3 pages</p> <p>23 Exhibit 19 "2011 Election Cycle, Candidate Report 146 of Receipts and Disbursements, 2001 24 Elections"; 54 pages</p> <p>25</p>	8	<p>1 INDEX (Continued)</p> <p>2 INDEX TO EXHIBITS</p> <p>3 Exhibit Description Page</p> <p>4 Exhibit 29 "PERS of Mississippi (U.S. Mid-Cap 193 Growth Account) - Fiduciary Review 5 Parts 1 & 2"; Bates MPERS 011839 - MPERS 011840</p> <p>6 Exhibit 30 "2010 Election Cycle, Candidate Report 203 of Receipts and Disbursements, 2010 7 Non-Judicial Election"; 32 pages</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">9</p> <p>1 DEPOSITION OF GEORGE W. NEVILLE</p> <p>2 April 3, 2013</p> <p>3</p> <p>4 THE VIDEOGRAPHER: Good morning. We are</p> <p>5 on the record. This is tape number one to the</p> <p>6 videotaped deposition of 30(b)(6) witness George</p> <p>7 Neville, in RE Diamond Foods, Inc., Securities</p> <p>8 Litigation, being heard before the United States</p> <p>9 District Court, Northern District of California, San</p> <p>10 Francisco Division. The case number is</p> <p>11 CV-11-05386-WHA. This deposition is being held at</p> <p>12 the law offices of Lief Cabraser, 275 Battery</p> <p>13 Street in San Francisco, California on April 3,</p> <p>14 2013. The time on the record is 9:04 a.m. My name</p> <p>15 is Nancy Karp, and I'm the videographer with</p> <p>16 Esquire. The court reporter is Catherine Ryan.</p> <p>17 Counsel, will you please introduce</p> <p>18 yourselves and affiliations and the witness will be</p> <p>19 sworn.</p> <p>20 MS. BRETAN: I'm Jennifer Bretan, Fenwick</p> <p>21 & West, on behalf of Defendant Diamond Foods.</p> <p>22 MS. BAFUS: Marie Bafus from Fenwick &</p> <p>23 West on behalf of Defendant Diamond Foods.</p> <p>24 MR. MARTIN: Robert Martin with Sidley</p> <p>25 Austin on behalf of Defendant Michael Mendes.</p>	<p style="text-align: right;">11</p> <p>1 seven and then eight to the extent that it involves</p> <p>2 the Attorney General's office.</p> <p>3 MS. BRETAN: Thank you.</p> <p>4 Q I'm Jennifer Bretan. I represent Diamond</p> <p>5 Foods in this matter.</p> <p>6 Have you been deposed before, Mr. Neville?</p> <p>7 A Yes.</p> <p>8 Q And how many times have you been deposed</p> <p>9 before?</p> <p>10 A In non-domestic relations cases?</p> <p>11 Q In non-domestic relations cases.</p> <p>12 A I think eight times.</p> <p>13 Q And were those securities --</p> <p>14 A Yes, they were.</p> <p>15 Q -- litigations?</p> <p>16 And what I'm going to do is have the court</p> <p>17 reporter mark as Exhibit 1 the "Amended Notice of</p> <p>18 Deposition of Lead -- 30(b)(6) Deposition of Lead</p> <p>19 Plaintiff" in this matter.</p> <p>20 (Exhibit 1 was marked for</p> <p>21 identification by the court reporter.)</p> <p>22 BY MS. BRETAN:</p> <p>23 Q So for the record, Exhibit 1 is the</p> <p>24 "Amended Notice of Deposition of Lead Plaintiff</p> <p>25 Mississippi Public Employees' Retirement System</p>
<p style="text-align: right;">10</p> <p>1 MS. BANKS: Ze'eva Kushner Banks, Chitwood</p> <p>2 Harley Harnes, on behalf of Lead Plaintiff.</p> <p>3 MR. HARNES: John Harnes, Chitwood Harley,</p> <p>4 on behalf of Lead Plaintiff.</p> <p>5 THE VIDEOGRAPHER: Will you please swear</p> <p>6 in the witness.</p> <p>7 GEORGE W. NEVILLE,</p> <p>8 having been administered an oath, was examined and</p> <p>9 testified as follows:</p> <p>10 THE VIDEOGRAPHER: Please proceed.</p> <p>11 EXAMINATION</p> <p>12 BY MS. BRETAN:</p> <p>13 Q Good morning, Mr. Neville.</p> <p>14 A Good morning.</p> <p>15 Q Can you state your full name and address</p> <p>16 for the record?</p> <p>17 A It's George W. Neville, 403 Garden Park</p> <p>18 Cove, Brandon, Mississippi 39047.</p> <p>19 MR. HARNES: Jennifer, can I just</p> <p>20 interrupt you for a second. I just wanted to put on</p> <p>21 the record -- and I don't know that it's necessary,</p> <p>22 but in connection with your 30(b)(6) notice of</p> <p>23 deposition, that Mr. Neville is here to testify</p> <p>24 about topics four to the -- to the extent that they</p> <p>25 involve the Attorney General's office, five, six,</p>	<p style="text-align: right;">12</p> <p>1 Pursuant to Federal Rules of Civil Procedure 26 and</p> <p>2 30(b)(6)." Do you understand, Mr. Neville, that</p> <p>3 you're testifying in connection with a securities</p> <p>4 class action lawsuit filed against Diamond Foods?</p> <p>5 A Yes, I do.</p> <p>6 Q And you understand you're testifying as</p> <p>7 person most knowledgeable on certain topics?</p> <p>8 A That's correct.</p> <p>9 Q Okay. And your counsel has identified</p> <p>10 those topics as -- in this notice as four as it</p> <p>11 relates to Diamond Foods, five, six, seven and eight</p> <p>12 with respect to documents of the AG's office, the</p> <p>13 Attorney General's office; is that correct?</p> <p>14 A Well, four you said as it relates to</p> <p>15 Diamond, but, I mean, obviously it relates to</p> <p>16 Diamond because that's why we're here, but that the</p> <p>17 AG's office would -- involvement with Diamond, yes,</p> <p>18 I do.</p> <p>19 Q And I just -- I know you're old hat at</p> <p>20 this, but I'd just for the record like to go through</p> <p>21 some rules for the deposition. Do you understand</p> <p>22 you're under oath and anything you say today is as</p> <p>23 if you were testifying in court?</p> <p>24 A I do.</p> <p>25 Q Okay. And you understand you should be</p>

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<p style="text-align: right;">13</p> <p>1 testifying truthfully?</p> <p>2 A Yes.</p> <p>3 Q Okay. And the reporter is going to</p> <p>4 transcribe everything you say today. If you don't</p> <p>5 understand one of my questions, Mr. Neville, I just</p> <p>6 need you to say so.</p> <p>7 A Okay.</p> <p>8 Q I'll assume otherwise that you understood</p> <p>9 my question if you don't tell me.</p> <p>10 (Mr. Rosenblit joined the deposition</p> <p>11 proceedings.)</p> <p>12 THE WITNESS: Oh.</p> <p>13 BY MS. BRETAN:</p> <p>14 Q Do you understand that?</p> <p>15 A Okay.</p> <p>16 Q I'll need you to answer audibly, and so</p> <p>17 that means no shaking heads.</p> <p>18 A Okay.</p> <p>19 Q Okay. Not to talk over me, and that will</p> <p>20 just help the court reporter transcribe.</p> <p>21 I'm entitled today to your best</p> <p>22 recollection. I'm not asking you to guess, but to</p> <p>23 your best recollection. If I ask you a question and</p> <p>24 later on you remember information that's additional,</p> <p>25 just let me know --</p>	<p style="text-align: right;">15</p> <p>1 A I understand.</p> <p>2 Q And, most importantly, you need to answer</p> <p>3 the question. You may have feelings about some of</p> <p>4 the issues we're going to discuss or points you want</p> <p>5 to make, and at the appropriate time, if called as a</p> <p>6 witness by your counsel, you will have the</p> <p>7 opportunity to make those points in response to your</p> <p>8 counsel's questions. The purpose today is to allow</p> <p>9 me a chance to ask you some questions, and so it's</p> <p>10 going to be important that we limit your answers to</p> <p>11 the questions I'm asking.</p> <p>12 A I'm not sure that I will, but ...</p> <p>13 MR. HARNES: I'm going to object -- I'm</p> <p>14 going to object to that instruction. He can answer</p> <p>15 a question any way he feels --</p> <p>16 THE WITNESS: Yeah, I --</p> <p>17 MR. HARNES: -- is the best way to answer.</p> <p>18 THE WITNESS: You know, I'm an attorney.</p> <p>19 This is not just -- the fact -- the first time I've</p> <p>20 ever been deposed. I'm an attorney practicing 27</p> <p>21 years. So I'm not sure that all this is terribly</p> <p>22 necessary, but if that's what you want to do.</p> <p>23 BY MS. BRETAN:</p> <p>24 Q I understand. Is there any reason you're</p> <p>25 not able to testify truthfully today?</p>
<p style="text-align: right;">14</p> <p>1 A Okay.</p> <p>2 Q -- or want to clarify something, please</p> <p>3 just let me know.</p> <p>4 A Okay.</p> <p>5 Q If you think there are documents that</p> <p>6 would be helpful in your testimony today, please let</p> <p>7 me know that as well.</p> <p>8 A Okay.</p> <p>9 Q We can take breaks today. I know time is</p> <p>10 scarce, but -- but just not while a question is</p> <p>11 pending, okay?</p> <p>12 A All right.</p> <p>13 Q Are you represented here today --</p> <p>14 A Yes --</p> <p>15 Q -- Mr. Neville?</p> <p>16 A -- I am.</p> <p>17 Q And who is your counsel?</p> <p>18 A Chitwood Harley.</p> <p>19 Q So if counsel objects today, you still</p> <p>20 need to answer my question. They're objecting to</p> <p>21 preserve that objection for the record. It doesn't</p> <p>22 mean you don't answer the question. Do you</p> <p>23 understand that?</p> <p>24 A Unless he instructs me not to answer.</p> <p>25 Q Unless he's instructing you not to answer.</p>	<p style="text-align: right;">16</p> <p>1 A No.</p> <p>2 Q Are you on any medications?</p> <p>3 A No.</p> <p>4 Q Okay. Any other reason why your testimony</p> <p>5 would be impaired?</p> <p>6 A No.</p> <p>7 Q Okay. Did you do anything to prepare for</p> <p>8 this deposition?</p> <p>9 A I met with my counsel.</p> <p>10 Q When was that?</p> <p>11 A Last week.</p> <p>12 Q Uh-huh. And for how long?</p> <p>13 A An hour or two.</p> <p>14 Q Did you speak with anyone other than your</p> <p>15 counsel regarding this deposition?</p> <p>16 A No.</p> <p>17 Q Did you review any documents in</p> <p>18 preparation for this deposition?</p> <p>19 A The notice, a brief, class cert and the</p> <p>20 complaint.</p> <p>21 Q Okay. Did you -- is there any other</p> <p>22 correspondence that you might have about this</p> <p>23 deposition with anyone other than your counsel?</p> <p>24 A I let people in the office know where I</p> <p>25 was going.</p>

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<p style="text-align: right;">17</p> <p>1 Q Okay. And have you been told to keep all</p> <p>2 your documents related to this case?</p> <p>3 A Yes.</p> <p>4 Q Okay. And I want to just very briefly go</p> <p>5 through your educational background. You attended</p> <p>6 college?</p> <p>7 A Yeah, I went to Meridian Junior College</p> <p>8 for a year, graduated from University of South</p> <p>9 Alabama in 1980, graduated from the University of</p> <p>10 Mississippi School of Law in 1986 -- excuse me --</p> <p>11 '85, admitted to the bar May 1 of 1986 in</p> <p>12 Mississippi. That's the only bar that I'm a member</p> <p>13 of.</p> <p>14 Q Okay. And thank you.</p> <p>15 For whom do you work, Mr. Neville?</p> <p>16 A Mississippi Attorney General's office.</p> <p>17 Q Okay. And what's your title?</p> <p>18 A Special Assistant Attorney General.</p> <p>19 Q And is that an elected position?</p> <p>20 A I'm not. His is.</p> <p>21 Q The Attorney General?</p> <p>22 A Correct.</p> <p>23 Q So you're -- are you appointed, then?</p> <p>24 A I suppose. We're hired. There are 125 of</p> <p>25 us; so it's not like I'm unique.</p>	<p style="text-align: right;">19</p> <p>1 elected position or --</p> <p>2 A No, we're all appointed, hired or</p> <p>3 whatever.</p> <p>4 Q And is the chief of staff involved in the</p> <p>5 campaign of Mr. Hood?</p> <p>6 A No.</p> <p>7 Q Okay. What are your responsibilities as</p> <p>8 Special Assistant Attorney General?</p> <p>9 A My primary responsibility is to oversee</p> <p>10 outside litigation. The State of Mississippi is</p> <p>11 either involved with the brains on -- with the</p> <p>12 outside counsel that's -- most of -- we have</p> <p>13 hundreds or thousands of cases that outside counsel</p> <p>14 may be involved with on behalf of the State of</p> <p>15 Mississippi, like defending workers' comp claims or</p> <p>16 tort claims and those kinds of things, but I don't</p> <p>17 typically do that. It's mostly the larger cases,</p> <p>18 consumer anti-trust or securities cases.</p> <p>19 Q Okay. And are you the person most</p> <p>20 knowledgeable about securities litigation undertaken</p> <p>21 by the AG's office?</p> <p>22 A Yes.</p> <p>23 Q And are you the most -- the person most</p> <p>24 knowledgeable for the AG's office in this particular</p> <p>25 litigation?</p>
<p style="text-align: right;">18</p> <p>1 Q Okay. And who is the Attorney General?</p> <p>2 A Jim Hood.</p> <p>3 Q And when did he -- is he an elected --</p> <p>4 he's elected?</p> <p>5 A That is correct.</p> <p>6 Q And --</p> <p>7 A He was first elected in 2003, sworn into</p> <p>8 office in January of 2004, been reelected twice.</p> <p>9 Q And when was the most recent election?</p> <p>10 A '11.</p> <p>11 Q 2011?</p> <p>12 A Uh-huh.</p> <p>13 Q And do you report to the Attorney General?</p> <p>14 A Well, my first line is the chief of staff.</p> <p>15 Q And who is that?</p> <p>16 A Geoffrey Morgan. That's G-e-o-f-f-r-e-y.</p> <p>17 Geoffrey Morgan is the chief of staff, and I report</p> <p>18 to Geoffrey, and then he reports to the Attorney</p> <p>19 General.</p> <p>20 Q Okay. What does the chief of staff do?</p> <p>21 A He oversees the office and makes sure that</p> <p>22 staff and functions of the office are being carried</p> <p>23 out and the policies of the AG and works with me</p> <p>24 overseeing any outside litigation.</p> <p>25 Q Okay. And is -- that's -- is that an</p>	<p style="text-align: right;">20</p> <p>1 A Yes.</p> <p>2 Q Okay. So I'd like to have you just walk</p> <p>3 me a little bit through the process of how outside</p> <p>4 litigation -- securities litigation gets started.</p> <p>5 What happens?</p> <p>6 A The typical process is that we're notified</p> <p>7 by -- there -- there are about 13 law firms that</p> <p>8 monitor the portfolio of PERS, which is about a</p> <p>9 \$21 billion fund, to determine if there have been</p> <p>10 allegations of fraud that -- in securities that we</p> <p>11 own. We either get a phone call or text or</p> <p>12 typically an email from one of the lawyers in those</p> <p>13 firms notifying us that a case is -- should either</p> <p>14 be brought or has been brought.</p> <p>15 I'd say 95 percent of the cases that</p> <p>16 people contact us about have already been brought</p> <p>17 under the Securities Act. As you know, there's a</p> <p>18 60-day window that larger holders of the security --</p> <p>19 in our case an institutional investor -- has to</p> <p>20 decide whether they would like to get involved in</p> <p>21 the case. We are contacted by various law firms</p> <p>22 about the merits of the case. They -- they may --</p> <p>23 sometimes we get -- the first day may just be a</p> <p>24 paragraph. The next day or three days later or so</p> <p>25 it may be the complaint that's already been filed, a</p>

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IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">21</p> <p>1 synopsis, those kinds of things. And so we analyze</p> <p>2 them to determine whether we feel like it's a case</p> <p>3 that we have some interest in getting involved with.</p> <p>4 Q And PERS is the pension fund for</p> <p>5 Mississippi; is that right?</p> <p>6 A Right. It's all state employees as well</p> <p>7 as county and city employees.</p> <p>8 Q Okay. And the AG's office represents PERS</p> <p>9 in a fiduciary capacity with respect to litigation;</p> <p>10 is that right? I'm just trying to understand the</p> <p>11 relationship between it -- how -- how it is that the</p> <p>12 AG is here representing -- you, on behalf of the AG,</p> <p>13 is representing PERS.</p> <p>14 A Because the Attorney General's office is</p> <p>15 responsible for all litigation on behalf of any</p> <p>16 state agency or arm of the State.</p> <p>17 Q Okay.</p> <p>18 A And so we do the analysis and -- and make</p> <p>19 the decision about whether this is a case that's</p> <p>20 appropriate or not, and that was what was done in</p> <p>21 Diamond.</p> <p>22 Q Okay. You mentioned monitoring firms --</p> <p>23 some 13 law firms are monitored?</p> <p>24 A That's correct.</p> <p>25 Q And are those monitoring agreements -- are</p>	<p style="text-align: right;">23</p> <p>1 analysis of when we bought, when we sold and whether</p> <p>2 it was in a class -- purported class period or not</p> <p>3 and, you know, is it a FIFO, a LIFO, a loss, and all</p> <p>4 of that stuff is done by the outside counsel. And</p> <p>5 so they need access to be able to do that.</p> <p>6 Q Okay. How do you choose the firms? How</p> <p>7 does the AG choose the firms that are -- with whom</p> <p>8 the office has monitoring agreements?</p> <p>9 A Is over time the -- we were approached in</p> <p>10 2004 by Bernstein Litowitz and Wolf Popper about</p> <p>11 doing it. It kind of grew from there, I suspect. I</p> <p>12 don't know this. As word spread around that -- some</p> <p>13 of the other firms that do securities work, like</p> <p>14 Chitwood Harley and others, that we were going to</p> <p>15 enter monitoring agreements with people, and so they</p> <p>16 asked if they could do that. At some point we got</p> <p>17 enough and we kind of just stopped. I mean, there</p> <p>18 was no magic or science to it.</p> <p>19 Q Okay. Who actually makes the decision to</p> <p>20 enter into the monitoring agreement with the law</p> <p>21 firm?</p> <p>22 A Well, the Attorney General ultimately</p> <p>23 makes all the decisions, but Geoffrey and the chief</p> <p>24 of staff and I make recommendations to it.</p> <p>25 Q Okay. You mentioned Bernstein Litowitz.</p>
<p style="text-align: right;">22</p> <p>1 there agreements reflecting those relationships?</p> <p>2 A Well, there's an agreement with the AG's</p> <p>3 office that they have a right to monitor.</p> <p>4 Q Okay.</p> <p>5 A And then there's -- those documents are</p> <p>6 public. I mean, they're -- we don't have them</p> <p>7 posted somewhere, but, I mean, they're public</p> <p>8 record.</p> <p>9 Q What do they provide -- what's the purpose</p> <p>10 of the agreement?</p> <p>11 A Well, as I appreciate it, they're -- I'm</p> <p>12 not a technological person --</p> <p>13 Q Okay.</p> <p>14 A -- but they have the ability to look at</p> <p>15 the holdings of PERS, when things were purchased,</p> <p>16 when they were sold, to determine whether -- even if</p> <p>17 the security was owned. I mean, in this case we</p> <p>18 happen to have owned Diamond Foods. We very well</p> <p>19 may not have owned it. A lot of major funds may not</p> <p>20 have owned Diamond Foods stock.</p> <p>21 So if a case is filed and they would like</p> <p>22 to ask us to look at being involved, then the law</p> <p>23 firm needs to tell us whether we own the stock or</p> <p>24 not because I don't have access to that. I mean, I</p> <p>25 can get it, but I don't want to have to do the</p>	<p style="text-align: right;">24</p> <p>1 A Litowitz, Berger & Grossmann. I think</p> <p>2 they were the first one. It may have been Wolf</p> <p>3 Popper, but those two were, I think, our first ones.</p> <p>4 Q And what are -- if you know, what are the</p> <p>5 other firms that --</p> <p>6 A Well, Lieff Cabraser is one.</p> <p>7 Q Lieff Cabraser?</p> <p>8 A Uh-huh.</p> <p>9 Q And Lieff Cabraser is counsel in this</p> <p>10 action?</p> <p>11 A Yeah, but they're also one of our</p> <p>12 monitoring firms. Kaplan Fox, Nix Patterson,</p> <p>13 Barrack, Rodos & Bacine, Bernstein Liebhard. I</p> <p>14 mentioned Wolf Popper. Baron & Budd. There's one</p> <p>15 out of Little Rock, and then there's -- Darren</p> <p>16 Check's firm out of Philadelphia. I can't remember</p> <p>17 the -- it's changed hands -- I mean, names a few</p> <p>18 times; so I'm not sure what the name is.</p> <p>19 Q It's not a memory test. I appreciate it.</p> <p>20 So pursuant to those agreements, then, if I'm</p> <p>21 understanding correctly, monitoring firms receive</p> <p>22 access to trading records of PERS?</p> <p>23 A My understanding is they have electronic</p> <p>24 access to the trading history.</p> <p>25 Q Okay. And what do they do with that</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">25</p> <p>1 information?</p> <p>2 A Well --</p> <p>3 MR. HARNES: Before we go any further, I</p> <p>4 just want to caution the witness to be cognizant of</p> <p>5 the attorney-client privilege in discussing too</p> <p>6 specifically. I have no problem if you discuss</p> <p>7 generally the services that were provided, but with</p> <p>8 respect to any specific -- specifics, I just want to</p> <p>9 caution him in advance.</p> <p>10 THE WITNESS: The -- again, as I</p> <p>11 appreciate how this works, they have electronic</p> <p>12 access to be able to look at the stocks and buy,</p> <p>13 sell, and they -- I've had to learn over time,</p> <p>14 obviously, what LIFO and FIFO mean and, you know,</p> <p>15 whether we have net gain or a net loss. And so they</p> <p>16 look at those transactions, make a determination of</p> <p>17 whether there is sufficient basis for us to get</p> <p>18 involved in a case.</p> <p>19 BY MS. BRETAN:</p> <p>20 Q Okay. And they use that information, the</p> <p>21 monitoring firms, to bring potential cases to your</p> <p>22 -- to the Attorney General's office's attention; is</p> <p>23 that right?</p> <p>24 A That's right, because we don't -- I</p> <p>25 presume there's some sort of newsletters and blogs</p>	<p style="text-align: right;">27</p> <p>1 A Uh-huh.</p> <p>2 Q Okay. He makes the ultimate decision</p> <p>3 whether to pursue a litigation or not?</p> <p>4 A That's right.</p> <p>5 Q Is there an amount of losses -- is there a</p> <p>6 threshold amount of losses related to that decision</p> <p>7 to go forward or not?</p> <p>8 A There's not --</p> <p>9 MR. HARNES: Can --</p> <p>10 THE WITNESS: I'm sorry.</p> <p>11 MR. HARNES: Can I think about that</p> <p>12 question for a second?</p> <p>13 THE WITNESS: I've testified a lot about</p> <p>14 this. So I --</p> <p>15 MR. HARNES: I'm sorry. I just --</p> <p>16 THE WITNESS: That's okay.</p> <p>17 MR. HARNES: Again, it's only a privilege</p> <p>18 issue. Go ahead. If you've testified, then</p> <p>19 it's ...</p> <p>20 THE WITNESS: I've been on panels before</p> <p>21 and spoken. Typically it's about \$2 million, but</p> <p>22 there's no locked figure. I mean, some pension</p> <p>23 funds, as I appreciate it, do have a minimum</p> <p>24 threshold, especially those like CalPERS or Ohio</p> <p>25 where they're so large, much, much larger than ours,</p>
<p style="text-align: right;">26</p> <p>1 on what cases that are filed. We don't follow</p> <p>2 those.</p> <p>3 Q Okay.</p> <p>4 A So the law firms would know what may have</p> <p>5 been filed; so they can advise us whether a case has</p> <p>6 merit or not.</p> <p>7 Q And once a case is brought to your</p> <p>8 attention, what do you do? Do you consult other</p> <p>9 firms at that point or what -- what happens next?</p> <p>10 A It depends. A case like Diamond -- I</p> <p>11 don't remember the number. Six or eight of our</p> <p>12 monitoring firms came to us because they realized</p> <p>13 that -- how -- fraudulent activity that had taken</p> <p>14 place. It was pretty blatant, and they felt like</p> <p>15 this was a case that should be brought or we should</p> <p>16 be involved with. There are some that -- we may</p> <p>17 only hear from one firm and -- but it varies from</p> <p>18 case to case, but often I go to the firms I haven't</p> <p>19 heard from and ask them to do an analysis or give</p> <p>20 their recommendation.</p> <p>21 Q Okay. And who decides whether to go</p> <p>22 forward with securities litigation?</p> <p>23 A The General, but, again, Geoffrey and I</p> <p>24 make a recommendation.</p> <p>25 Q And that's Attorney General Hood?</p>	<p style="text-align: right;">28</p> <p>1 that they will set some minimum -- I don't know what</p> <p>2 it is -- you know, of 10 million or \$50 million, but</p> <p>3 ours is around 2, but, you know, like in this case</p> <p>4 it doesn't mean that we won't do a case that we feel</p> <p>5 like is a good one.</p> <p>6 BY MS. BRETAN:</p> <p>7 Q And here -- do you know what the claimed</p> <p>8 losses are here?</p> <p>9 A My memory is it was about 1.8 million.</p> <p>10 Q So it didn't meet the 2 million threshold?</p> <p>11 A I think 1.8 is less than 2, yeah.</p> <p>12 Q Who chooses -- once the decision is made</p> <p>13 to go forward, who is it that chooses what outside</p> <p>14 counsel will be retained?</p> <p>15 A Well, our Attorney General always makes</p> <p>16 the ultimate decision in all this, but Geoffrey and</p> <p>17 I recommend a law firm or firms.</p> <p>18 Q And what do you -- is it the firm that</p> <p>19 first contacted you typically?</p> <p>20 A Typically, that is the first thing that we</p> <p>21 look at because in -- it doesn't necessarily apply</p> <p>22 so much in the securities realm, but a lot of the --</p> <p>23 most of the time when we hear from attorneys -- in</p> <p>24 essence it's like a Quitam Case. They're</p> <p>25 whistle-blowers. We may not know about it; so we</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">29</p> <p>1 don't want to take their idea and go pass it off on 2 someone else. In the securities realm, obviously 3 the -- if we've contacted eight firms, there are 4 eight often that have some interest in it, but we do 5 give a preference to the first person that contacts 6 us.</p> <p>7 Q Has PERS ever proposed or selected a firm 8 that is not a monitoring firm as lead counsel in a 9 securities litigation?</p> <p>10 A I don't think so.</p> <p>11 Q Would it be possible for outside counsel 12 to analyze whether PERS should participate in a 13 securities case without access to that bank 14 information -- the trading information we were 15 talking about?</p> <p>16 A I don't know that they could. A stock 17 like Exxon Mobile is probably held by PERS in 18 multiple different funds because I would suspect -- 19 again, I don't analyze their holdings, but the -- 20 there were several index funds, and so a company as 21 large as Exxon Mobile is probably in some of the 22 index funds, if not all of them.</p> <p>23 And then there may be some that they're 24 target acquisitions based on an analyst at one of 25 the investment advisor's recommendation to buy, but</p>	<p style="text-align: right;">31</p> <p>1 confidentiality agreement.</p> <p>2 THE WITNESS: And, by the way -- excuse 3 me -- you asked me -- we did hire local counsel on a 4 case or cases, as it turned out, dealing with our 5 mortgage-backed securities, Pond, Gadow & Tyler, 6 but, you know, I'll let them know they -- I gave 7 them the list of monitoring firms and said, "You all 8 need to work with somebody here on this list or 9 several of these folks on this list because the 10 judges probably aren't going to approve you all as 11 class counsel. So that's what happened. But 12 they -- they came to us with the information, but 13 they had to get somebody to work the case.</p> <p>14 BY MS. BRETAN:</p> <p>15 Q Was that a securities class action?</p> <p>16 A Well, there are several of them, yes. And 17 Merrill Lynch we've settled. Goldman Sachs we've 18 settled. We were involved with Morgan Stanley, JP 19 Morgan, Wells -- several.</p> <p>20 Q That's fine. So this is an agreement. 21 It's Bates-labeled at the bottom 202 -- MSPERS 22 020244.</p> <p>23 (Exhibit 2 was marked for 24 identification by the court reporter.) 25 //</p>
<p style="text-align: right;">30</p> <p>1 as I appreciate, a lot of the issues that come up as 2 far as at the stage where the court is going to make 3 a decision who is going to be lead counsel and 4 ultimately class rep, it's going to be based on the 5 holdings and the trading activity during the class 6 period.</p> <p>7 And so there are lots of reasons why even 8 though you may not have access to the data and you 9 think, "Well, if Exxon is the case, then certainly 10 there's going to be holdings and it will be 11 sufficient and I'll get in touch with Mississippi." 12 If they can't tell me whether we fit into the class 13 period or not, it's not very helpful to me.</p> <p>14 Q So the monitoring firms or -- or even 15 firms that were not monitoring firms, they would 16 need access to that -- the trading records of PERS 17 in order to do the analysis needed to bring a case 18 to you?</p> <p>19 A Well, it's not -- I mean, the -- yes, they 20 -- they could ultimately get it through public 21 records request, but it doesn't mean that they could 22 do the analysis quickly enough to be able to meet 23 the 60-day window, if that's what we're in.</p> <p>24 MS. BRETAN: I'm going to have the 25 reporter mark as Exhibit 2 a monitoring and</p>	<p style="text-align: right;">32</p> <p>1 BY MS. BRETAN:</p> <p>2 Q Do you recognize this document?</p> <p>3 A A lot of blank pages, but, yeah, it looks 4 like the monitoring agreement that the different law 5 firms would sign, and then at the end it's got a 6 confidentiality agreement, which is Chitwood 7 Harley's ability to access electronically the 8 portfolio.</p> <p>9 Q Okay. And is this the kind of monitoring 10 agreement we were just discussing?</p> <p>11 A Yes, it is.</p> <p>12 Q And it's between the Chitwood firm and the 13 Attorney General's office?</p> <p>14 A Well, the monitoring agreement is, not the 15 confidentiality -- the confidentiality agreement is 16 between the retirement system and Chitwood Harley.</p> <p>17 Q Okay.</p> <p>18 A Frank Ready was the executive director of 19 PERS at the time.</p> <p>20 Q Okay.</p> <p>21 MR. HARNES: Jennifer, if I may interrupt 22 for just a second, if it's not self-evident, there 23 should be a notation that there's information 24 redacted from this on the basis of attorney-client 25 privilege.</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">33</p> <p>1 MS. BRETAN: The --</p> <p>2 MR. HARNES: It's not --</p> <p>3 MS. BRETAN: The internal -- all these</p> <p>4 blanks pages are not actually blank.</p> <p>5 MR. HARNES: I'm sorry?</p> <p>6 MS. BRETAN: These are not blank pages.</p> <p>7 MR. HARNES: Well, the things have been --</p> <p>8 MS. BRETAN: Redacted.</p> <p>9 MR. HARNES: -- have been redacted from</p> <p>10 them.</p> <p>11 MS. BRETAN: Okay.</p> <p>12 MR. HARNES: And I apologize. It doesn't</p> <p>13 reflect that things have been redacted.</p> <p>14 BY MS. BRETAN:</p> <p>15 Q Okay. And this agreement -- the first</p> <p>16 part of the agreement, that's signed by Attorney</p> <p>17 General Hood; is that right?</p> <p>18 A That's right.</p> <p>19 Q Okay. And the purpose of this agreement</p> <p>20 with the Chitwood firm is to do what we were</p> <p>21 discussing, to monitor the PERS investment</p> <p>22 portfolio; is that correct?</p> <p>23 A The monitoring --</p> <p>24 MR. HARNES: I object. The document</p> <p>25 speaks for itself, but go ahead.</p>	<p style="text-align: right;">35</p> <p>1 instance -- as potential counsel for those claims?</p> <p>2 A We consider each case independently. We</p> <p>3 consider who brought it -- who came to us and said</p> <p>4 something -- "Here. Here it is." I mean, we</p> <p>5 consider it.</p> <p>6 Q Okay. And at the bottom paragraph on page</p> <p>7 20244 the agreement notes that "The Attorney General</p> <p>8 will ask PERS to arrange for its custodial bank to</p> <p>9 provide the law firm Chitwood with access to trading</p> <p>10 information of PERS"; is that correct? Do you see</p> <p>11 that?</p> <p>12 A Yeah, just what I've testified earlier, is</p> <p>13 that they have a right to electronically monitor.</p> <p>14 We said we would work with PERS to do that, and</p> <p>15 that's what that monitoring -- I mean electronic</p> <p>16 access confidentiality agreement is on pages 1, 2</p> <p>17 and 3 near the back. You'll see it's Bates-stamped</p> <p>18 020253, 54 and 55.</p> <p>19 Q And that's a confidentiality agreement</p> <p>20 with PERS; is that correct?</p> <p>21 A Uh-huh.</p> <p>22 Q So that's at the back of this agreement.</p> <p>23 And in the second "Whereas" clause, turning to the</p> <p>24 confidentiality agreement on 20253 --</p> <p>25 A Which paragraph?</p>
<p style="text-align: right;">34</p> <p>1 THE WITNESS: The monitoring agreement for</p> <p>2 them to monitor.</p> <p>3 BY MS. BRETAN:</p> <p>4 Q Okay. And they're looking for potential</p> <p>5 cases or providing the Attorney General with an</p> <p>6 analysis with respect to potential claims; is that</p> <p>7 right?</p> <p>8 MR. HARNES: Object to the form of the</p> <p>9 question.</p> <p>10 THE WITNESS: They -- for them to be able</p> <p>11 to evaluate the holdings, to be able to advise us on</p> <p>12 any issue that may be of concern at the Attorney</p> <p>13 General's office on behalf of the State of</p> <p>14 Mississippi.</p> <p>15 BY MS. BRETAN:</p> <p>16 Q Okay. In the, let's see, one, two --</p> <p>17 third paragraph down in the agreement it notes that</p> <p>18 you'll consider retaining Chitwood & Harley to</p> <p>19 represent it as counsels -- as counsel with respect</p> <p>20 to such actions; is that correct?</p> <p>21 A It says that.</p> <p>22 Q And is that accurate that when they --</p> <p>23 when the firm brings to the Attorney General's</p> <p>24 attention potential claims, you then consider the</p> <p>25 monitoring firm that has -- Chitwood in this</p>	<p style="text-align: right;">36</p> <p>1 Q The second "Whereas" clause.</p> <p>2 A All right.</p> <p>3 Q I guess it's the first "Whereas" clause.</p> <p>4 It says that -- that "PERS, the system," which is</p> <p>5 PERS, correct, "owes fiduciary obligations to its</p> <p>6 members to protect and invest the system's asset";</p> <p>7 do you see that?</p> <p>8 A Yes.</p> <p>9 Q What does that mean --</p> <p>10 A Well --</p> <p>11 Q -- to you, reading it?</p> <p>12 A The retirement system has an obligation to</p> <p>13 look out for the best interest of its -- the people</p> <p>14 that are either paying in currently or those that</p> <p>15 have already paid in or those people who are drawing</p> <p>16 a retirement check.</p> <p>17 Q And in the fifth -- the fourth "Whereas"</p> <p>18 clause, the first before "The Terms," it says, "The</p> <p>19 system contends -- considers the information</p> <p>20 provided to be confidential"; is that correct?</p> <p>21 A That's right.</p> <p>22 Q So the trading -- is that -- that's the</p> <p>23 trading information, correct?</p> <p>24 A That's right, because they have realtime</p> <p>25 access.</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">37</p> <p>1 Q Okay. And that information is</p> <p>2 confidential?</p> <p>3 A It is, but you -- you know, the public can</p> <p>4 make a public records request and say, you know, "Do</p> <p>5 we own stock in BP?" Obviously that was a big issue</p> <p>6 for Mississippians at the time of the oil spill.</p> <p>7 They probably -- I don't know.</p> <p>8 They probably did get open records</p> <p>9 requests, but, as I mentioned, BP is like Exxon</p> <p>10 Mobile. It's so large I know we own it. I just</p> <p>11 don't have any doubt about it. I haven't looked,</p> <p>12 but I'm sure we do.</p> <p>13 And so if somebody filed a open records</p> <p>14 request and said -- which is in the federal side --</p> <p>15 you know, it's Freedom of Information Act, but we</p> <p>16 call it the open records act and -- you know, I'd</p> <p>17 like to see what holdings we have, and they've got</p> <p>18 to go pull all that stuff together, and it's not</p> <p>19 easy and kind of a pain, but they will, and they</p> <p>20 have, I think, ten days to take -- to get all that</p> <p>21 together, ten working days.</p> <p>22 Q Okay. Is the monitoring agreement that</p> <p>23 we've been looking at with the Chitwood firm -- is</p> <p>24 that still in effect?</p> <p>25 A As far as I know, yes. The custodial bank</p>	<p style="text-align: right;">39</p> <p>1 in this case.</p> <p>2 We -- we looked at it, you know, as</p> <p>3 mentioned, as you know -- under the law of the</p> <p>4 60-day window to file for leads. It gives you some</p> <p>5 time to be able to analyze the case, and typically</p> <p>6 what we asked for and what we receive is analysis</p> <p>7 from the various firms.</p> <p>8 And so each one of those firms provided us</p> <p>9 some sort of analysis and a copy of how -- probably</p> <p>10 at some point in time -- I don't remember -- that I</p> <p>11 would have said, "Don't send me the original</p> <p>12 complaint. I've already got it." But I would have</p> <p>13 gotten an original complaint, any kind of analysis</p> <p>14 and certainly news articles, things of that nature</p> <p>15 that may have been -- come out, anything that's</p> <p>16 newsworthy or relevant that would help us make a</p> <p>17 determination of whether Geoffrey and I want to</p> <p>18 recommend to the AG's office to do the case or not.</p> <p>19 Q Okay. Do you recall which firm contacted</p> <p>20 you first?</p> <p>21 A My memory is that Chitwood did.</p> <p>22 Q Okay. Was Grant & Eisenhofer one of the</p> <p>23 firms that contacted you?</p> <p>24 A Yes, my memory is that it was second. I</p> <p>25 don't know that, but I think so, yes, which is --</p>
<p style="text-align: right;">38</p> <p>1 is different and there's a different executive</p> <p>2 director --</p> <p>3 Q But they have -- they --</p> <p>4 A -- as far as I know.</p> <p>5 Q -- still have access --</p> <p>6 A As far as I know, yes.</p> <p>7 Q -- to the custodial bank records?</p> <p>8 A That's my understanding.</p> <p>9 Q I want to talk a little bit about this</p> <p>10 specific litigation now. How did -- how did -- in</p> <p>11 this case how did the outside litigation start?</p> <p>12 Were you contacted by a monitoring firm?</p> <p>13 A Well, the original litigation was filed by</p> <p>14 someone else.</p> <p>15 Q Okay.</p> <p>16 A So that's how it started. I don't know</p> <p>17 what law firm or what plaintiffs. I just don't</p> <p>18 remember. I saw the original complaint.</p> <p>19 Q And with respect to PERS, though, and</p> <p>20 PERS' involvement, how did the litigation start?</p> <p>21 A Well, we were notified or contacted by</p> <p>22 several, as I mentioned -- I think six or maybe more</p> <p>23 -- six to eight of the monitoring firms about this</p> <p>24 particular matter and asked us to look at the</p> <p>25 feasibility of whether we would like to get involved</p>	<p style="text-align: right;">40</p> <p>1 they're also -- my memorization test, they're one of</p> <p>2 our monitoring firms.</p> <p>3 Q Okay. And did Lief Cabraser contact you?</p> <p>4 A Yes, I think they did.</p> <p>5 Q Were they third?</p> <p>6 A No, I -- I don't think so. I don't</p> <p>7 remember who was third, but I don't think they were.</p> <p>8 Q Okay. And who made the decision -- the</p> <p>9 ultimate decision to get involved in the case?</p> <p>10 A The Attorney General.</p> <p>11 Q And that was the decision to move for a</p> <p>12 lead plaintiff status --</p> <p>13 A That's right.</p> <p>14 Q -- is that correct?</p> <p>15 A Uh-huh.</p> <p>16 MS. BRETAN: Okay. I'm going to have the</p> <p>17 court reporter mark as Exhibit 3 the "Motion by</p> <p>18 Mississippi PERS For Appointment As Lead Plaintiff."</p> <p>19 (Exhibit 3 was marked for</p> <p>20 identification by the court reporter.)</p> <p>21 BY MS. BRETAN:</p> <p>22 Q So, Mr. Neville, Exhibit 3 is the motion</p> <p>23 by Mississippi PERS to be appointed lead plaintiff.</p> <p>24 A Okay.</p> <p>25 Q Do you recognize this document?</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">41</p> <p>1 A Uh-huh.</p> <p>2 Q Turning to the first page --</p> <p>3 A First substantive page or the index?</p> <p>4 Q First substantive page.</p> <p>5 A All right.</p> <p>6 Q I'm going to turn your attention to</p> <p>7 footnote two there. Could you read footnote two,</p> <p>8 Mr. Neville?</p> <p>9 A "Pursuant to this --" out loud or ...?</p> <p>10 Q Yes, please.</p> <p>11 A "Pursuant to this court's January 5th,</p> <p>12 2012, order, see docket number 22, Mississippi PERS</p> <p>13 is deferring its application to appoint its counsel,</p> <p>14 Chitwood Harley Harnes, LLP and Grant & Eisenhofer,</p> <p>15 PA, as co-lead counsel for the class of all of those</p> <p>16 who purchased or otherwise acquired Diamond Foods,</p> <p>17 Inc. securities during the class period. At the</p> <p>18 appropriate time, as directed by the court,</p> <p>19 Mississippi PERS will move for an order approving</p> <p>20 Mississippi PERS' selection of Chitwood Harley</p> <p>21 Harnes, LLP and Grant & Eisenhofer, PA as co-lead</p> <p>22 counsel and Lieff Cabraser Heimann & Bernstein, LLP</p> <p>23 as local counsel."</p> <p>24 Q So this motion was filed on January 6th,</p> <p>25 2012; is that correct? It's at the top of the page.</p>	<p style="text-align: right;">43</p> <p>1 Certainly on the front end, to select and</p> <p>2 make recommendation to the court about who is going</p> <p>3 to be counsel. It varies about how many, you know,</p> <p>4 attend motion practice sometimes, to approve and --</p> <p>5 hiring of experts, to approve the filing of</p> <p>6 complaints or amended complaints, decisions about</p> <p>7 whether to appeal it or not. I've been involved in</p> <p>8 numerous mediations. So attend mediations and</p> <p>9 actively engage in the chance of settlement of the</p> <p>10 case and what -- how much and what are the</p> <p>11 conditions, corporate governance issues.</p> <p>12 Q Okay. Do you know what the class period</p> <p>13 is in this case?</p> <p>14 A I don't remember offhand. It's in the</p> <p>15 complaint.</p> <p>16 Q Okay. If you turn to page 2, right at the</p> <p>17 bottom in the statement of issues it notes a class</p> <p>18 period defined December 9th, 2000 -- page 2, lines</p> <p>19 19 and a half through 20 and a half, "Class period</p> <p>20 from December 9th, 2010, through November 4th, 2011,</p> <p>21 inclusive"; do you see that?</p> <p>22 A Right, that's the original class period</p> <p>23 that was in the original complaints.</p> <p>24 Q And at the time of this motion did you</p> <p>25 feel that that was the correct period?</p>
<p style="text-align: right;">42</p> <p>1 A Oh, okay. Yes.</p> <p>2 Q On January 6th, 2012, had the Attorney</p> <p>3 General's office already determined that Chitwood --</p> <p>4 the Chitwood firm -- I'm going to call Chitwood</p> <p>5 Harley Harnes the Chitwood firm --</p> <p>6 A That's okay.</p> <p>7 Q -- if that's okay -- and Grant &</p> <p>8 Eisenhofer and Lieff Cabraser would be appointed</p> <p>9 co-lead and local counsel?</p> <p>10 A We had determined that we would like to</p> <p>11 work with Chitwood and Harley and G&E as our</p> <p>12 counsel, co-lead counsel and that Lieff Cabraser</p> <p>13 would be our local counsel.</p> <p>14 Q Okay. And had -- so that determination</p> <p>15 had been made by January 1st, 2012 -- I mean</p> <p>16 January 6th, 2012?</p> <p>17 A It's what we wanted to propose.</p> <p>18 Q Okay.</p> <p>19 A I mean, obviously the court had to make</p> <p>20 the final decision about who was going to be lead</p> <p>21 counsel.</p> <p>22 Q What is the role of lead plaintiff in a</p> <p>23 securities class action?</p> <p>24 A To oversee the litigation, to make sure</p> <p>25 that the class interests are being looked out after.</p>	<p style="text-align: right;">44</p> <p>1 A Based on the analysis and whatever that I</p> <p>2 may have had with counsel, I was comfortable with</p> <p>3 that, but, as I know, in progress through litigation</p> <p>4 you often learn things that may make you change your</p> <p>5 mind.</p> <p>6 Q Okay. And on the same line, same sentence</p> <p>7 where they're defined -- where the class is defined</p> <p>8 it says, "The classes on behalf of all purchasers of</p> <p>9 Diamond securities during that period"; do you see</p> <p>10 that? Line 19 and a half.</p> <p>11 A Uh-huh.</p> <p>12 Q What are "all purchasers"? What does that</p> <p>13 mean?</p> <p>14 A People that purchased Diamond securities</p> <p>15 on the stock market.</p> <p>16 Q And are short sellers purchasers in -- in</p> <p>17 the class?</p> <p>18 A I don't know. I'd have to consult my</p> <p>19 attorney and -- I don't know.</p> <p>20 Q Okay.</p> <p>21 A Typically, it's not the people that were</p> <p>22 engaged in the lit- -- I mean in the fraud</p> <p>23 themselves.</p> <p>24 Q Are short sellers engaged in the fraud?</p> <p>25 A No, I'm talking about the</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">45</p> <p>1 corporate-governance people --</p> <p>2 Q Oh.</p> <p>3 A -- the corporate leaders.</p> <p>4 Q Okay. And on page 4, line 2 it says that</p> <p>5 "Mississippi PERS believed that it is the most</p> <p>6 adequate plaintiff, as defined by the PSLRA and</p> <p>7 should be appointed to represent all persons who</p> <p>8 purchased or otherwise acquired the securities of</p> <p>9 Diamond during the class period"; is that correct?</p> <p>10 A You -- you read it correctly.</p> <p>11 Q Okay. So at the time this motion was</p> <p>12 submitted, did you view people who would have</p> <p>13 purchased after November 4th differently than the</p> <p>14 people in the class period defined at that time?</p> <p>15 A It -- when we filed under the PSLRA 60-day</p> <p>16 window, I don't think I remember ever having a case</p> <p>17 that we were engaged in where we didn't file an</p> <p>18 amended complaint. So very rarely -- I don't know</p> <p>19 that most anyone stands on the original complaint.</p> <p>20 For maybe -- there are a lot of reasons why, but</p> <p>21 certainly the counsel that we engage makes a</p> <p>22 determination or evaluation whether they think that</p> <p>23 the complaint -- excuse me -- yeah, the complaint</p> <p>24 ought to reflect a different class period, and they</p> <p>25 have to -- and they file the amended complaint, and</p>	<p style="text-align: right;">47</p> <p>1 motion was filed, which is approximately two months</p> <p>2 after the original complaint was filed, you still</p> <p>3 thought that that class period defined was the</p> <p>4 appropriate class period?</p> <p>5 MR. HARNES: Object to the question -- to</p> <p>6 the form of the question. That just completely</p> <p>7 mischaracterizes what he just said. The question</p> <p>8 has been asked and answered. And go ahead and</p> <p>9 answer it.</p> <p>10 MS. BRETAN: Counsel, I appreciate that</p> <p>11 you are aware of Judge Alsup's supplemental order.</p> <p>12 MR. HARNES: And I'm objecting to the form</p> <p>13 of the question --</p> <p>14 MS. BRETAN: Okay.</p> <p>15 MR. HARNES: -- and -- and one form -- one</p> <p>16 essence of form is improper foundation, and that was</p> <p>17 an improper foundation.</p> <p>18 BY MS. BRETAN:</p> <p>19 Q You can answer.</p> <p>20 MR. HARNES: Yes, you may.</p> <p>21 THE WITNESS: I think what you're -- I</p> <p>22 don't know where you're trying to go with this.</p> <p>23 BY MS. BRETAN:</p> <p>24 Q That's okay.</p> <p>25 A But my guess is you're trying to -- some</p>
<p style="text-align: right;">46</p> <p>1 the court is going to take up the decision of</p> <p>2 whether they think -- what the class period ought to</p> <p>3 be.</p> <p>4 So you do the analysis based on the</p> <p>5 complaint that's filed. You make a determination of</p> <p>6 whether you feel like this is an action that you</p> <p>7 feel like you could do a better job than who is</p> <p>8 purported to be the lead plaintiff, the first to</p> <p>9 file the lawsuit, and step in and see if it's -- you</p> <p>10 can do a better job.</p> <p>11 One of the things is evaluating whether</p> <p>12 the first complaint, the original complaint,</p> <p>13 adequately meets the -- the laws and whether it</p> <p>14 meets the interest of the folks who bought the</p> <p>15 stock. You have to look at it from the standpoint</p> <p>16 of -- the court is not going to -- as I appreciate</p> <p>17 the PLSRA, the court is not going to give</p> <p>18 Mississippi PERS lead plaintiff status if they</p> <p>19 didn't buy and sell or -- excuse me -- they didn't</p> <p>20 have losses sustained during the class period that's</p> <p>21 on file originally. You'd have to file a different</p> <p>22 lawsuit. So you go with what you've got, and then</p> <p>23 you evaluate to see whether it needs to be expanded</p> <p>24 or contracted.</p> <p>25 Q Okay. And on January 6th, 2012, when this</p>	<p style="text-align: right;">48</p> <p>1 sort of trick back here. It's not going to work,</p> <p>2 okay?</p> <p>3 Here's the deal. You know the PLSRA just</p> <p>4 like -- much better than I do, I'm sure. You take</p> <p>5 the complaint that's on record. If you believe that</p> <p>6 they're -- because there may be class periods for</p> <p>7 different lawsuits that are filed -- in that case,</p> <p>8 there may be a motion to consolidate the cases</p> <p>9 because they involve some of the same issues, but</p> <p>10 they're different periods of time.</p> <p>11 So every case that I've been involved</p> <p>12 with, the amended complaint that -- or the lead</p> <p>13 plaintiff and their counsel are allowed to file</p> <p>14 incorporates information that they learn or they</p> <p>15 believe is best for the class, and they file the</p> <p>16 amended complaint. That's when you, as defense</p> <p>17 counsel, come in and ask the court to either limit</p> <p>18 the class period. You ask them to dismiss certain</p> <p>19 claims or the entire claim, of course. They always</p> <p>20 do that no matter what the evidence is, and then</p> <p>21 they ask the court to try to eliminate certain</p> <p>22 defendants, certain basis of causes of action. So I</p> <p>23 don't -- I'm not -- I've answered the question. I</p> <p>24 don't know what it -- if you want an answer that you</p> <p>25 want, it may not be the truth, and it may be what I</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">49</p> <p>1 think may be some sort of trick. You're not going 2 to get it. 3 Q My question was straightforward, I 4 thought. What I was asking was: At the time this 5 lead plaintiff motion was filed, which had a class 6 period defined December 9th through November 4th, 7 did you think that was the appropriate class period? 8 A It's the class period that's on file. You 9 don't get to go make stuff up. You don't get to 10 make stuff up. 11 Q Okay. 12 A You are stuck with the complaint that's on 13 record. You file for lead plaintiff status of the 14 complaint that's on file. If you feel like you need 15 to do something different, you file the first 16 amended complaint. 17 MS. BRETAN: Okay. Let's mark as 18 Exhibit 4 a declaration that was submitted in 19 connection with the lead plaintiff motion. 20 (Exhibit 4 was marked for 21 identification by the court reporter.) 22 BY MS. BRETAN: 23 Q So Exhibit 4, Mr. Neville, is a 24 declaration of James Wilson, Jr. in support of 25 Mississippi PERS' motion for appointment as lead</p>	<p style="text-align: right;">51</p> <p>1 correct? 2 A Yes. 3 Q Is that statement accurate? 4 A It is what we put in every certification. 5 Q So that's just standard language? 6 A Yes. 7 Q Okay. Who at PERS reviewed the facts and 8 allegations of a complaint filed -- 9 A It's me on behalf of PERS. 10 Q Let me just finish the question -- 11 A Oh. 12 Q -- okay? So you are the person referred 13 to -- when it says, "Mississippi PERS reviewed the 14 facts and allegations of the complaint," that would 15 be you? 16 A That's correct. 17 Q And you are standing in -- for purposes of 18 that sentence, you are standing -- the Attorney 19 General's office is effectively standing in the 20 shoes of Mississippi PERS? 21 A Mississippi PERS is an arm or an agent of 22 the state of Mississippi, an agency. The Attorney 23 General's office represents the State in its 24 entirety as well as its agencies and its arms, and, 25 yes, that's why I'm here. That's what I've been</p>
<p style="text-align: right;">50</p> <p>1 plaintiff; is that right? 2 A That's what it says, uh-huh. 3 Q And turning to Exhibit A, it appears to be 4 a certification by you; is that correct? 5 A That's right. 6 Q Did you prepare this certification? 7 A No. 8 Q Who prepared that? 9 A Counsel. 10 Q Okay. What is the certification? 11 A That we own the stock and we own -- had 12 transactional history within the stock. 13 Q Okay. And in paragraph two of your 14 certification you note that "Mississippi PERS' 15 transactions in Diamond Foods are listed in the 16 chart attached as schedule A"; is that correct? 17 A That's correct. 18 Q And did you prepare the attached schedule? 19 A No, I did not. 20 Q And who prepared the schedule? 21 A Counsel. 22 Q Okay. Paragraph three, the first sentence 23 there, you state that "Mississippi PERS has reviewed 24 the facts and allegations of a complaint filed in 25 this action and adopts its allegations"; is that</p>	<p style="text-align: right;">52</p> <p>1 designated as a 30(b)(6) for. 2 Q I understand. So you're essentially 3 acting on behalf of Mississippi PERS with respect to 4 the certification? 5 A I'm acting on behalf of the State of 6 Mississippi, and PERS is the holder of the 7 transaction or the securities. 8 Q I'm just -- if you look at the top it says 9 he's -- that you're certifying on behalf of 10 Mississippi PERS; is that correct? 11 A Uh-huh. 12 Q Okay. 13 A It says that, yes. 14 Q Okay. So this is filed in connection with 15 the January 6th, 2012, motion for lead plaintiff. 16 In January of 2012 what complaint is it where you 17 reviewed the facts and allegations? 18 A Jorge Salhuana, an individual on behalf of 19 all others similarly situated, versus Diamond Foods, 20 Inc., Michael Mendes and Steven Neil. 21 Q And that's the original complaint filed in 22 this action? 23 A That's my understanding or memory. I 24 certainly don't have any specific memory of studying 25 the title.</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">53</p> <p>1 Q But you reviewed the facts and</p> <p>2 allegations --</p> <p>3 A Yes --</p> <p>4 Q -- of that complaint?</p> <p>5 A -- I did.</p> <p>6 Q And when you say you "adopt its</p> <p>7 allegations," what does that mean?</p> <p>8 A It means until we file a first amended</p> <p>9 complaint, it's what we're going with.</p> <p>10 Q So you agreed with the allegations in that</p> <p>11 complaint?</p> <p>12 A For purposes of the PLSRA, yes.</p> <p>13 Q Okay. Still in paragraph three of your</p> <p>14 certification, you go on to say that "PERS intends</p> <p>15 to actively monitor the conduct of this action for</p> <p>16 the benefit of the class"; do you see that?</p> <p>17 A I do.</p> <p>18 Q Is that statement accurate?</p> <p>19 A Yes.</p> <p>20 Q What do you do to actively monitor this</p> <p>21 action?</p> <p>22 A I talk with counsel on a regular basis. I</p> <p>23 approve filings of complaints, amended complaints,</p> <p>24 discuss discovery issues, hire -- there's a younger</p> <p>25 lawyer named Martin Millett who helps Geoffrey and</p>	<p style="text-align: right;">55</p> <p>1 co-lead plaintiff, we're not in the litigation</p> <p>2 except as a passive class member; so there's no</p> <p>3 reason for having a law firm retained at that point,</p> <p>4 but I -- for some reason I think we had, but I just</p> <p>5 don't remember the specifics, but often we don't do</p> <p>6 it until after the court has made a decision.</p> <p>7 Q And there's an approval process for lead</p> <p>8 counsel as well, correct?</p> <p>9 A Are you talking about for us or are you</p> <p>10 talking about the court?</p> <p>11 Q With respect to the court.</p> <p>12 A Yeah, every case. The court is the</p> <p>13 ultimate decider who is going to be class counsel.</p> <p>14 Q Okay.</p> <p>15 A Typically they defer to the lead plaintiff</p> <p>16 that they've chosen, but they ultimately make the</p> <p>17 decision.</p> <p>18 Q And is the retention agreement you're</p> <p>19 talking about -- is that signed before or after that</p> <p>20 determination is made?</p> <p>21 A I just testified that we often wait until</p> <p>22 after the court has made the determination of who is</p> <p>23 going to be class lead. If we're not chosen as</p> <p>24 class lead or co-class lead, we often -- there's no</p> <p>25 reason at that point to have a retention agreement.</p>
<p style="text-align: right;">54</p> <p>1 me in this. There's Jane Mapp, who is an attorney</p> <p>2 over at PERS that's an AG lawyer. She works full</p> <p>3 time at the agency. That's where her office is.</p> <p>4 And we all work on issues about discovery. We talk</p> <p>5 about strategy and make decisions about where things</p> <p>6 ought to go and what we ought to do.</p> <p>7 Q Okay. Continuing on in paragraph three,</p> <p>8 it says, "Mississippi PERS has retained the law firm</p> <p>9 of Grant & Eisenhofer, PA and the law firm of</p> <p>10 Chitwood Harley Harnes, LLP to represent Mississippi</p> <p>11 PERS." Is that correct?</p> <p>12 A You read it correctly.</p> <p>13 Q And was that statement accurate?</p> <p>14 A Uh-huh. We had agreed that we would make</p> <p>15 a motion for lead plaintiff status and ask the court</p> <p>16 to appoint the two of them as co-lead counsel.</p> <p>17 Q So the statement says that "Mississippi</p> <p>18 PERS had retained the law firm of Grant & Eisenhofer</p> <p>19 and the law firms of Chitwood Harley & Harnes." Had</p> <p>20 you retained them at that point?</p> <p>21 A I don't remember. We typically don't sign</p> <p>22 a retention agreement until after the court has</p> <p>23 approved an attorney -- us to be lead plaintiff</p> <p>24 because if we're not -- if the court doesn't</p> <p>25 designate or choose Mississippi PERS as the lead or</p>	<p style="text-align: right;">56</p> <p>1 Q But prior to the determination of class</p> <p>2 counsel?</p> <p>3 A Typically we don't sign -- we have an</p> <p>4 agreement. We have a verbal agreement. It's</p> <p>5 binding. We don't have a signed retention agreement</p> <p>6 typically until after the court has made the</p> <p>7 determination of whether we're going to be class</p> <p>8 lead or not.</p> <p>9 Q And I'm asking specifically: Is that</p> <p>10 retention agreement before the court has approved</p> <p>11 class counsel?</p> <p>12 MR. HARNES: I think you just asked --</p> <p>13 objection to form. You just -- you just asked that</p> <p>14 question and he just answered it.</p> <p>15 THE WITNESS: In my experience the court</p> <p>16 makes a determination who is class counsel at the</p> <p>17 same time he makes a decision as to who is going to</p> <p>18 be class lead.</p> <p>19 BY MS. BRETAN:</p> <p>20 Q Okay. Is there a retention agreement with</p> <p>21 Grant & Eisenhofer?</p> <p>22 A I don't think so. I think it's with</p> <p>23 Chitwood Harley.</p> <p>24 Q In paragraph four you state that</p> <p>25 "Mississippi PERS believes it has suffered damages</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">57</p> <p>1 as a result of Defendants' fraudulent conduct"; do 2 you see that? 3 A Uh-huh. 4 Q What damages are you referring to there? 5 A The loss in stock values. 6 Q Are damages the same as the loss in stock 7 value? 8 A No, but typically you can't determine 9 damages until after the court has made decisions as 10 it relates to what the class period is going to be, 11 whether he's going to allow certain disclosures to 12 be accepted or not as causing damages, and then an 13 expert has to make some evaluation based on the 14 trading history. 15 Q Do you know what the damages are to 16 Mississippi PERS in this action? 17 A I do not. 18 Q Okay. At the time of this filing had 19 there been analysis done with respect to Mississippi 20 PERS' damages? 21 A No. Losses. 22 Q Okay. In paragraph four the final 23 sentence says that "Mississippi PERS believes its 24 claims against Defendants are typical as those of 25 other class members"; do you see that?</p>	<p style="text-align: right;">59</p> <p>1 calls for a legal conclusion. You can go ahead and 2 answer. 3 THE WITNESS: The court makes 4 determinations of who is going to be in the class 5 not based on the law, and that's a battle between 6 you all and my counsel. It's not my responsibility 7 to battle that out and to know the intricacies of 8 all the securities cases around the country or 9 certainly in the Ninth Circuit to determine whether 10 you are able as class lead to cover cases -- the 11 case as a co-lead -- I mean as lead. Sometimes 12 they'll appoint a class rep after class cert -- if 13 they certify the class, then they'll want class reps 14 to -- to cover some claims that they feel like are 15 not covered adequately by the person who is now the 16 class rep. So you'll have -- they might not have a 17 role in the litigation as far as picking counsel and 18 making decisions about strategy, but they -- I call 19 it covering the gaps. I -- but, again, how all of 20 that works and the legal issues involved, it's not 21 my call. 22 BY MS. BRETAN: 23 Q And the gaps involve areas -- to your 24 understanding, gaps would involve areas where the 25 class -- the lead plaintiff, as class rep, doesn't</p>
<p style="text-align: right;">58</p> <p>1 A Uh-huh. 2 Q And what were you -- what were you basing 3 that on? 4 A The requirement of the PLSRA that those 5 that want to be lead plaintiff have -- meet the 6 threshold of typicality, that they have typical 7 trading histories that would encompass most of the 8 -- those purported members of the class as it 9 relates to losses that they may have sustained. 10 Q Mr. Neville, are you aware that 11 Mississippi PERS had sold all of its holdings by 12 November 16th, 2011? 13 A I believe that's what this ... 14 Q It's in the back of that same document. 15 A The one I've got in my hand? 16 Q The one you have your hand on -- 17 A Okay. 18 Q -- Schedule A. 19 A I haven't done the math, but if you say 20 that all those -- if you add up on the right to the 21 same as the purchases, then okay. 22 Q Would Mississippi PERS be typical of 23 purchasers after November 16th? 24 MR. HARNES: I'm going to object to the 25 question. Object to the form of the question. It</p>	<p style="text-align: right;">60</p> <p>1 necessarily cover the interests of the entire class? 2 MR. HARNES: Could I have that question 3 read back, please. 4 (Record read by the reporter.) 5 MR. HARNES: I'm objecting to the -- to 6 the form of the question to the extent -- I'm 7 objecting to the form of the question. It -- it 8 lacks foundation, but go ahead. 9 THE WITNESS: The -- there is -- as I 10 understand the PLSRA, the lead plaintiff and then 11 the class rep is given some latitude to be able to 12 cover the basis, so to speak, of more people than 13 those that fit its exact selling history and 14 purchasing history. 15 We've had a real long tortuous history in 16 the mortgage-backed securities realm because of the 17 rulings that various courts have made, and now most 18 of them have been overturned by the Second Circuit 19 as it related to whether -- if you owned a 20 pass-through certificate or not, whether you could 21 cover those people in tranches other than the 22 tranche you purchased in, and all of this is -- I 23 don't keep up with on a day-to-day legal basis. I'm 24 not an expert in it. 25 And so we believe we have been in the past</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">61</p> <p>1 and continue to be a very good fiduciary on behalf 2 of people who have suffered losses, damages in 3 securities cases. We do that just like CalPERS does 4 it, New York State Plan, Arkansas Teachers and on 5 and on. That's what our role is. We feel like we 6 do a better job and we have a fiduciary duty to the 7 class, and we look out for that, and that's what we 8 do. 9 BY MS. BRETAN: 10 Q So when you say here that Mississippi PERS 11 believes its -- in paragraph four, "Mississippi PERS 12 believes its claims against Defendants are typical 13 of those of other members of the class," you think 14 Mississippi PERS having sold -- let me rephrase -- 15 let me check the question, leave it there. 16 Let's go to paragraph seven. 17 A Okay. 18 Q Paragraph seven lists other cases where 19 Mississippi PERS was appointed lead plaintiff in 20 securities cases in the three prior years; is that 21 correct? 22 A Yes. 23 Q And just running through those cases, the 24 first one is Sat- -- "In Re Satyam Computer 25 Services."</p>	<p style="text-align: right;">63</p> <p>1 securities litigation. Who is your counsel in that 2 case? 3 A Labaton. 4 Q Is that Labaton Sucharow -- 5 A I never have learned how to pronounce the 6 second name. 7 Q Uh-huh. And are they a monitoring firm? 8 A Yes. 9 Q Okay. And the next case is the 10 Goldman-Sachs case? 11 A That's right. That was a pass-through 12 case, a mortgage-backed securities pass-through 13 case. 14 Q And who was your counsel in that case? 15 A Well, that was the one where -- the Pond 16 Gadow & Tyler firm, but they associated Bernstein 17 Litowitz or got Bernstein Litowitz to be class 18 counsel on that. The case has settled. 19 Q And I think you said Bernstein Litowitz is 20 a monitoring firm for -- 21 A They are. 22 Q Okay. Hill versus State Street? 23 A It's ongoing and we're in discovery. 24 That -- 25 Q Who is counsel?</p>
<p style="text-align: right;">62</p> <p>1 A Right. 2 Q Who was counsel in that case? 3 A G&E and Bernstein Litowitz, I believe. We 4 were co-lead counsel -- I mean co-lead plaintiff. 5 Q And Grant & Eisenhofer and Bernstein 6 Litowitz are monitoring firms -- 7 A That's right. 8 Q -- is that correct? 9 A Uh-huh. 10 Q What's the status of that case? 11 A It's effectively over. We settled with 12 Satyam. We are in a tax dispute with the country of 13 India, who claimed that they were able to assess a 14 15 or 20 percent tax on the settlement. We settled 15 with the accounting firm. We still have outstanding 16 claims against the individual defendants, only some 17 of them. Unfortunately, they are in jail, and we 18 don't expect they'll be able to pay. The court 19 dismissed the individual defendants that aren't in 20 jail. So there's defendants outstanding, but the 21 collectibility is an issue. 22 Q Okay. The next one is World Bank of 23 Scotland. 24 A Uh-huh. 25 Q Is that a securities -- that's a</p>	<p style="text-align: right;">64</p> <p>1 A Bernstein Litowitz. 2 Q Bernstein Litowitz and -- Structured Asset 3 Mortgage case, the next one -- 4 A Unfortunately -- 5 Q -- who is counsel? 6 A Well, Pond Gadow. It's a pass-through 7 case, but I don't remember which of the underwriters 8 this is. It's a pass-through case. Pond Gadow & 9 Tyler, they've associated -- Bernstein Litowitz 10 owned several. Wolf Popper owned two and Lieff 11 Cabraser owned one, and I, unfortunately -- because 12 I don't know which one of the underwriters this is, 13 I can't tell you, but it's one of the three. 14 Q And all three of those firms are 15 monitoring firms? 16 A That's correct. 17 Q Okay. Bach versus Amedisys? 18 A Amedisys. 19 Q Amedisys. 20 A The judge dismissed the case. We filed a 21 motion for reconsideration. We're co-lead with 22 Puerto Rico Teachers Fund. Our counsel is Bernstein 23 Litowitz and Puerto Rico's is Wolf Popper. 24 Q Okay. And turning to schedule A, which is 25 attached, you signed -- if you turn to page 3, this</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">65</p> <p>1 -- you signed this on January 5th, 2012; is that 2 correct? 3 A That's right. 4 Q Okay. The certification. In turning to 5 schedule A, so we've talked about -- at the time of 6 this motion, the class period was defined to end 7 November 4th, 2011, correct? 8 A I don't have the original complaint in 9 front of me, but I -- 10 Q That was in Exhibit 3. 11 MS. BAFUS: Exhibit 4. No, Exhibit 3. 12 BY MS. BRETAN: 13 Q I can represent to you that it said 14 November 4th, 2011. 15 A Okay. Well, that's the trading data from 16 that period of time because that's what we would 17 have had to file under the PLSRA. 18 Q Okay. And based on this schedule, it 19 looks like PERS had sold its shares by 20 November 16th, 2011; is that correct? 21 A That's what this says, yes. 22 MS. BRETAN: Okay. Let's go to Exhibit 5. 23 I'm going to ask the court reporter to mark 24 Exhibit 5. 25 (Exhibit 5 was marked for</p>	<p style="text-align: right;">67</p> <p>1 A That's correct. 2 Q Okay. And those are purchases by PERS in 3 Diamond Foods? 4 A That's right. 5 Q And so there are trades running from about 6 June 3rd, 2011, to August 19th, 2011. I'm going to 7 be asking you about those first, those trades first 8 up through August 19th -- 9 A Okay. All right. 10 Q -- 2011. Do you know what the base -- 11 what PERS was relying on when it made those trades 12 in -- what information PERS was relying on when it 13 made those trades in Diamond Foods? 14 MR. HARNES: I'm going to object to that 15 question. This is not what this witness is about -- 16 this witness is here to testify. I'm happy to let 17 him answer. 18 THE WITNESS: PERS doesn't do investing 19 decisions itself. It has, I think, somewhere in the 20 20 range of investment advisors that are hired by -- 21 there's investment -- as I appreciate it -- 22 Ms. Tingle can give you all of this information. 23 BY MS. BRETAN: 24 Q Who is Ms. Tingle? 25 A She's investment director -- I'm not sure</p>
<p style="text-align: right;">66</p> <p>1 identification by the court reporter.) 2 THE WITNESS: This would be a good time 3 for me to hit the restroom, if that's okay. 4 MS. BRETAN: Okay. 5 THE VIDEOGRAPHER: Okay. I'll get us off 6 the record, and if everyone can leave their 7 microphones on the table. Going off the record, and 8 the time is 10:10 a.m. 9 (Recess.) 10 THE VIDEOGRAPHER: Back on the record. 11 The time is 10:21 a.m. Please continue. 12 BY MS. BRETAN: 13 Q Actually, I would like to turn back to 14 Exhibit 4, if you don't mind, for a minute. Do you 15 recall Exhibit 4 has attached to it -- is a 16 declaration in support of the lead plaintiff motion? 17 It has your certification attached to it, and 18 attached to your certification is schedule A, which 19 has transactions in Diamond Foods. 20 A Okay. 21 Q Do you see that? If you look on the 22 left-hand side of the page on schedule A, 23 Mr. Neville, there are trades running from -- which 24 appear to be purchased in Diamond Foods; is that 25 correct?</p>	<p style="text-align: right;">68</p> <p>1 of her exact title, but, I mean, she's in charge of 2 all the investment issues as relates to PERS. And 3 there's a board of trustees for PERS, and they have 4 a committee, and they interview and make decisions 5 of what advisors to hire or not -- or dismiss, and 6 those investment advisors are given, as I appreciate 7 it, unfettered ability to buy and sell based on 8 guidance, either state law or the PERS guidance that 9 they have, and they're -- some of them are indexed 10 funds that might buy any kind of security worldwide. 11 Some may be a security in only U.S. companies, but 12 they have those that invest in small cap stocks and 13 large value. I mean, it's full -- as I appreciate 14 it, it runs the full gamut. 15 BY MS. BRETAN: 16 Q Okay. 17 A Those people make the decisions to buy and 18 sell. PERS has -- I nor Ms. Tingle are going to 19 know why we bought or sold shares in any stock, much 20 less this particular one. 21 Q Okay. Thank you. And similarly for the 22 sales of Diamond? 23 A That's right. We don't -- there's a 24 hands-off policy. I'm sure there's a formal word 25 for it, but that's what I would call it, a hands-off</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">69</p> <p>1 policy, and they don't make any decisions. So if 2 the governor calls up and says, "Man, I want you all 3 to buy some Coca-Cola," they're not going to do it. 4 Q Okay. So your understanding is that the 5 investment managers to PERS make all the decisions 6 with respect to buying and selling? 7 A That's right, and if -- 8 MR. HARNES: Object to the form of the 9 question. 10 THE WITNESS: And if it's an index fund, 11 what stocks or securities are in the index is made 12 by the investment advisor. And that's -- so if they 13 -- nobody is going to buy or sell a security based 14 on a phone call from Lorrie or me or the governor or 15 anyone else. 16 BY MS. BRETAN: 17 Q Okay. 18 MR. HARNES: I'm going to ask -- this is 19 twice now. I'm going to ask you to let him finish 20 his answer before you try and cut him off. 21 THE WITNESS: We through with it? I'm 22 through. Are you through with this? 23 BY MS. BRETAN: 24 Q Yes. So before the break we marked 25 Exhibit 5.</p>	<p style="text-align: right;">71</p> <p>1 recommendation to Geoffrey about a securities matter 2 unless we talk about it first, but he doesn't report 3 to me; he reports to Geoffrey. 4 Q Turning back a page on page 7, the 5 questionnaire asks who prepared or reviewed the 6 answers given and whether lawyers assisted in any 7 way and that they be identified. 8 A Which number are we talking about? 9 Q It's paragraph nine, question nine. The 10 questionnaire notes that you assisted -- 11 A That's right. 12 Q -- in preparing or reviewing the answers 13 to the questionnaires. Is that correct? 14 A That's right. 15 Q And attached to the questionnaire as 16 Exhibit C is a list of Mississippi PERS transactions 17 in Diamond Foods, Inc.; do you see that? 18 A Yes. 19 Q Did you prepare this exhibit? 20 A No. 21 Q Do you know who prepared this exhibit? 22 A My presumption would be outside counsel. 23 They have access to the electronic information. 24 Q Okay. I noticed on Exhibit B, if you go 25 down to the purchases on October 6th, 2011; do you</p>
<p style="text-align: right;">70</p> <p>1 A Okay. 2 Q Exhibit 5 is the "Court Questionnaire to 3 Lead-Plaintiff Candidates." Do you recognize this 4 document? 5 A Yes. 6 Q What is it? 7 A The -- and this was unique to my 8 experience, that this court sent out a questionnaire 9 and had those of us to answer all these questions. 10 That's just not something that I've experienced 11 before, but this particular judge wanted all these 12 answers. 13 Q And this questionnaire is signed -- let me 14 see -- turning to page 8, by Martin Millett; am I 15 reading that correctly? 16 A That's right. 17 Q Who is Mr. Millett? 18 A He's -- as I mentioned a while back, he 19 worked with -- he's a younger attorney that works 20 with me and Geoffrey on securities matters at the 21 AG's office. 22 Q Do you have people who report to you 23 directly? 24 A Not even -- not even my secretary. I 25 mean, obviously Martin is not going to make a</p>	<p style="text-align: right;">72</p> <p>1 see that? 2 A Yes, uh-huh. 3 Q It shows two purchases of 2900 shares on 4 October 6th at two different prices; do you see 5 that? 6 A Uh-huh. 7 Q Do you believe it's accurate that 8 Mississippi PERS purchased 2900 shares at differing 9 prices on that day? 10 A I did not go back and -- because I don't 11 have electronic access, so -- so I didn't go back to 12 verify whether this information is accurate. It 13 could be a typographical error. It could be 14 correct. You certainly could. The prices fluctuate 15 throughout the day; so it could easily be at a 16 different price. 17 Q And the next two entries on October 18th, 18 2011, show 3600 shares being purchased twice at two 19 different prices; do you see that? 20 A Same answer. 21 Q And on October 21st, 2011, it shows 2200 22 shares being purchased twice; do you see that? 23 A Same answer. 24 Q Okay. You're not sure whether those are 25 accurate?</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">73</p> <p>1 A I don't have any personal knowledge. I</p> <p>2 have not looked at the electronic data.</p> <p>3 Q Did you -- in helping to prepare this</p> <p>4 court questionnaire, did you do anything to confirm</p> <p>5 that the Exhibit B was accurate?</p> <p>6 A I relied on representations of counsel.</p> <p>7 Q Turning to page two of the court</p> <p>8 questionnaire, I think this is a preamble of sorts</p> <p>9 from the court, but if you look at line 23, it notes</p> <p>10 that -- I'll read it. "No decision by lead</p> <p>11 plaintiff is more important than the selection of</p> <p>12 class counsel"; do you see that?</p> <p>13 A I do.</p> <p>14 Q Do you agree with that?</p> <p>15 A Actually, I think the most -- I think</p> <p>16 it's --</p> <p>17 MR. HARNES: I'm not coaching the witness.</p> <p>18 THE WITNESS: I think it's a good answer</p> <p>19 -- I mean, you know it's a good statement, but</p> <p>20 whether it is the most important, I'm not sure. I</p> <p>21 hadn't thought about it. I mean, according to Judge</p> <p>22 Alsup, it means that; so, you know, I know the</p> <p>23 correct thing for me to say at this point would be,</p> <p>24 "Yeah, that's right, Judge. You're right," but, I</p> <p>25 mean, I'm not sure. I think it's extremely</p>	<p style="text-align: right;">75</p> <p>1 think earlier we were talking about who -- which of</p> <p>2 the monitoring firms is normally recommended --</p> <p>3 typically recommended to be lead counsel in these</p> <p>4 securities litigation cases; do you recall that?</p> <p>5 MR. HARNES: I object to the form of the</p> <p>6 question. I think the factual predicate is</p> <p>7 inaccurate.</p> <p>8 THE WITNESS: You and I discussed who was</p> <p>9 on our monitoring list and how they got on the</p> <p>10 monitoring list, and we discussed how we might</p> <p>11 select which of the monitoring firms we would want</p> <p>12 to work with on a particular case. We did discuss</p> <p>13 that.</p> <p>14 BY MS. BRETAN:</p> <p>15 Q Uh-huh. And I think -- I think you said</p> <p>16 that typically the first firm that contacts the AG's</p> <p>17 office with respect to potential claims in typical</p> <p>18 cases, that's the firm that's recommended; is that</p> <p>19 correct?</p> <p>20 A Well, it's one of. We may recommend more</p> <p>21 than one firm, but that's true not just in the</p> <p>22 securities realm, but also secure -- would be the</p> <p>23 case in non-securities cases.</p> <p>24 Q And the AG's office handles non-security</p> <p>25 cases as well as security cases?</p>
<p style="text-align: right;">74</p> <p>1 important, but I don't know if it's the most</p> <p>2 important.</p> <p>3 BY MS. BRETAN:</p> <p>4 Q What do you think is the most important?</p> <p>5 A I haven't thought about it at all.</p> <p>6 Q Okay. On page -- turn to page 4 of the</p> <p>7 certification -- I mean the questionnaire. That's</p> <p>8 question two. It asks about qualifications to be</p> <p>9 lead plaintiff.</p> <p>10 A Uh-huh.</p> <p>11 Q On line 13 there it notes that</p> <p>12 "Mississippi PERS engages in an extensive, thorough</p> <p>13 process of vetting outside law firms with the</p> <p>14 experience and manpower and resources to handle</p> <p>15 large, complex litigation such as this case"; is</p> <p>16 that correct?</p> <p>17 A That's right.</p> <p>18 Q And then it goes on to say that "After</p> <p>19 selecting the firm that has done a comprehensive</p> <p>20 analysis of a particular case, Mississippi PERS</p> <p>21 negotiates and executes an agreement setting the</p> <p>22 potential attorneys' fees we're covering"; is that</p> <p>23 correct?</p> <p>24 A Uh-huh.</p> <p>25 Q And with respect to the vetting process, I</p>	<p style="text-align: right;">76</p> <p>1 A Right. You asked me that -- that was one</p> <p>2 of the first things you asked me about, what I did,</p> <p>3 and I oversee anti-trust, consumer and health care</p> <p>4 fraud matters.</p> <p>5 Q And turning to page 6 of the</p> <p>6 questionnaire, page 6 and question six, the court</p> <p>7 asks whether there are any circumstances that might</p> <p>8 give rise to possible issues asserted against you</p> <p>9 that would not generally apply to the rest of the</p> <p>10 class do you see that?</p> <p>11 A Uh-huh.</p> <p>12 Q And Mr. -- the response is that</p> <p>13 "Mississippi PERS is unaware of any circumstances</p> <p>14 that might give rise to possible issues being</p> <p>15 asserted against it that would not apply to the rest</p> <p>16 of the class"; do you see that --</p> <p>17 A Well --</p> <p>18 Q -- the answer, line 18?</p> <p>19 A -- we are -- the answer is in relation to</p> <p>20 the question asked. Yes, I see that.</p> <p>21 Q And is it accurate that Mississippi PERS</p> <p>22 was unaware of any circumstances that might give</p> <p>23 rise to possible issues being asserted against it</p> <p>24 that would not apply to the rest of the class?</p> <p>25 A It was in context of the an- -- I mean,</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">77</p> <p>1 the question asked -- I mean, an individual would 2 not necessarily have -- is not a governmental 3 entity. So if an individual is asking to be lead, 4 they may be subject to being sued for driving 5 negligently in a car; we wouldn't. 6 And the converse is if the state 7 transportation department in the state of 8 Mississippi issued a no-bid contract on the building 9 of a bridge, an emergency circumstance -- an 10 individual wouldn't be issuing a no-bid contract for 11 a bridge to be built after a disaster. 12 So there are going to be circumstances, 13 but that's not what the court, as I appreciate the 14 question, was about. The question was about fraud. 15 The example is about fraud. "Ever convicted of a 16 crime?" No. Well, the county of Lauderdale or the 17 state of Mississippi is not going to be convicted of 18 a crime, but an individual might be. 19 Q Okay. So your understanding of question 20 six was that it was just about fraud? 21 A My understanding of question six is the 22 context of the question that was asked. 23 Q What's your understanding of question six? 24 MR. HARNES: Asked and answered. 25 THE WITNESS: I can read it. "Are there</p>	<p style="text-align: right;">79</p> <p>1 identification by the court reporter.) 2 BY MS. BRETAN: 3 Q Exhibit 6 is a memorandum in further 4 support of Mississippi PERS' motion for appointment 5 as lead plaintiff -- 6 A Okay. 7 Q -- filed February 9th, 2012. Do you 8 recognize this document? 9 A Yes, uh-huh. 10 Q So turning to page 6, substantive page 6, 11 now paragraph two there or section two, it says, 12 "Mississippi PERS will adequately work to represent 13 the interests of the class"; do you see that? 14 A I do. 15 Q And it goes on to say that -- and this is 16 line 27 -- that "The requirement is met if there are 17 no conflicts between the representative and class 18 interests and the representatives' attorneys are 19 qualified, experienced and generally able to conduct 20 litigation"; do you see that? 21 A Yes, you read that correctly. 22 Q And do you agree with that statement? 23 A It sounds logical to me. 24 MR. HARNES: I'm going to object to the 25 form of the question to the extent it asks for him</p>
<p style="text-align: right;">78</p> <p>1 any circumstances that might give rise to possible 2 issues asserted against you that would not generally 3 apply against the rest of the class?" Very 4 open-ended, very broad question. It could be open 5 to many interpretations. So I'll look to the rest 6 of the paragraph. 7 "Have you ever been convicted of a crime? 8 If so, state the circumstances. Have you ever been 9 sued in a fraud suit? If so, state the 10 circumstances." So the second and third part of 11 that paragraph would lead the normal person to 12 understand that the very broad first sentence is 13 talking about matters that have to do with 14 fraudulent or criminal behavior. 15 BY MS. BRETAN: 16 Q Okay. Are there circumstances that might 17 give rise to possible issues asserted against 18 Mississippi PERS that would not generally apply to 19 the rest of the class? 20 A I've already answered that question. I 21 gave you an example. 22 MS. BRETAN: Okay. Let's turn to 23 Exhibit 6. I'm asking the court reporter to mark 24 Exhibit 6. 25 (Exhibit 6 was marked for</p>	<p style="text-align: right;">80</p> <p>1 to draw a legal conclusion, but he can go ahead and 2 answer. 3 THE WITNESS: It sounds fine. 4 BY MS. BRETAN: 5 Q So adequacy relates to whether there are 6 conflicts between the interests of the 7 representative on the one hand, Mississippi PERS, 8 and the class interests generally; is that -- is 9 that correct? 10 A Adequacy -- adequacy is determined by the 11 court. There's case law. It's right there in front 12 of you. You know, it's not my role here. You know, 13 I'm an attorney, but I'm not designated for purposes 14 of interpreting the law for you. So I'm not going 15 to tell you anything other than we adopt whatever 16 the case law is. 17 Q Okay. But this is Mississippi PERS' 18 submission in support of its appointment motion to 19 be appointed lead plaintiff, correct? 20 A It's called a legal memorandum. 21 Q Okay. 22 A So it's prepared by the attorneys based on 23 the law in this case, probably more Ninth Circuit 24 oriented, but certainly the U.S. Supreme Court and 25 what the congress has enacted and set out certain</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">81</p> <p>1 criteria to determine who should be class lead.</p> <p>2 Q Can you turn to page 7 for just a moment?</p> <p>3 A Okay. All right.</p> <p>4 Q At line 17 do you see the sentence</p> <p>5 beginning with "Furthermore"?</p> <p>6 MR. HARNES: I'm sorry. What page are we</p> <p>7 on?</p> <p>8 MS. BRETAN: Page 7, line 17.</p> <p>9 MR. HARNES: Sorry.</p> <p>10 THE WITNESS: Okay. I read it.</p> <p>11 BY MS. BRETAN:</p> <p>12 Q Could you read that sentence aloud?</p> <p>13 A The one that ends on 17 or starts on 17?</p> <p>14 Q The one that starts on 17, "Furthermore."</p> <p>15 A "Furthermore, there are no facts</p> <p>16 suggesting that any actual or potential conflict of</p> <p>17 interest or other antagonism exists between the</p> <p>18 interests of Mississippi PERS and other class</p> <p>19 members."</p> <p>20 Q Is that statement accurate?</p> <p>21 MR. HARNES: Same objection that I did</p> <p>22 before.</p> <p>23 THE WITNESS: At the time there was</p> <p>24 nothing that would indicate that there were any</p> <p>25 facts that would lead anyone to know about any</p>	<p style="text-align: right;">83</p> <p>1 A It's on letterhead, but I signed it.</p> <p>2 Q Did you write this letter?</p> <p>3 A I mean, I helped edit it. It was a joint</p> <p>4 effort.</p> <p>5 Q A joint effort by ...?</p> <p>6 A Martin, Geoffrey, the outside counsel and</p> <p>7 myself.</p> <p>8 Q Why did you send -- why did you send this</p> <p>9 letter to Judge Alsup?</p> <p>10 A His response to some question that he had.</p> <p>11 Q Do you remember what the question was?</p> <p>12 A My memory is he wanted to know why the</p> <p>13 Mississippi PERS Attorney General's office and --</p> <p>14 was the one who was in charge or whatever, who --</p> <p>15 basically the driving force behind litigation and</p> <p>16 not PERS itself, for instance, Pat Robertson, the</p> <p>17 executive director or the board of trustees or</p> <p>18 whatever, and we laid out the law and why. And he</p> <p>19 was -- that was the -- what he wanted to hear, I</p> <p>20 suppose, because that was the last we heard of it.</p> <p>21 Q So Judge Alsup had asked for information</p> <p>22 about why the Attorney General's office was</p> <p>23 representing PERS instead of someone directly at</p> <p>24 PERS; is that correct?</p> <p>25 A That was the gist of my understanding. I</p>
<p style="text-align: right;">82</p> <p>1 antagonism. I -- there's no secret. I have</p> <p>2 somewhat of an antagonism with the counsel who was</p> <p>3 attempting to be representing the class, but I don't</p> <p>4 have any beef with those other class members.</p> <p>5 BY MS. BRETAN:</p> <p>6 Q And who is that counsel?</p> <p>7 A I'd rather not say. They're not involved</p> <p>8 in the litigation.</p> <p>9 Q Was it personal antagonism with their --</p> <p>10 A I don't care much for them, and one of</p> <p>11 them particularly didn't care for me.</p> <p>12 Q Is that the Robbins Geller firm?</p> <p>13 A Yes.</p> <p>14 Q And were they among the retained firm for</p> <p>15 the --</p> <p>16 A Oh, no.</p> <p>17 MS. BRETAN: Let's mark Exhibit 7.</p> <p>18 (Exhibit 7 was marked for</p> <p>19 identification by the court reporter.)</p> <p>20 BY MS. BRETAN:</p> <p>21 Q Exhibit 7 is a March 5th, 2012, letter</p> <p>22 from -- it appears to be from Attorney General Jim</p> <p>23 Hood to Judge Alsup.</p> <p>24 A It's on the letterhead.</p> <p>25 Q It's on letterhead.</p>	<p style="text-align: right;">84</p> <p>1 mean, he wasn't familiar with us, I guess. We never</p> <p>2 had this issue come up before, but he wanted it</p> <p>3 addressed and we addressed it.</p> <p>4 Q Was it your sense that the -- that Judge</p> <p>5 Alsup hadn't had prior cases where the Attorney</p> <p>6 General was representing the pension fund before; is</p> <p>7 that --</p> <p>8 MR. HARNES: I'm going to object to the</p> <p>9 form of the question as --</p> <p>10 THE WITNESS: I don't --</p> <p>11 MR. HARNES: -- calls for speculation.</p> <p>12 THE WITNESS: Excuse me. I have no idea</p> <p>13 what the basis was. I just know he was puzzled and</p> <p>14 curious. It wasn't the normal process for him, I</p> <p>15 suppose, and so we went through this exercise to lay</p> <p>16 it out for him. And we did. And here we are.</p> <p>17 BY MS. BRETAN:</p> <p>18 Q All right. Turning to page 5 of the</p> <p>19 letter, at the very last line on page 5 of the</p> <p>20 letter it says that "The office of the Attorney</p> <p>21 General, on behalf of PERS, has accepted the</p> <p>22 profound responsibility to be the fiduciary for the</p> <p>23 class impacted by the underlying allegations"; do</p> <p>24 you see that?</p> <p>25 A This one, yes, I do.</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">85</p> <p>1 Q What is the job of the -- what is the</p> <p>2 purpose of being the fiduciary for the class?</p> <p>3 A It --</p> <p>4 MR. HARNES: Object. That question has</p> <p>5 been asked and answered, but you can go ahead and</p> <p>6 answer it again if you can.</p> <p>7 THE WITNESS: It is to oversee the</p> <p>8 litigation, to make sure that the interests of the</p> <p>9 class are being represented. One of the reasons</p> <p>10 that we have law firms that -- on our monitoring</p> <p>11 list and not every law firm that might want to be on</p> <p>12 it is that we want to make sure that we have law</p> <p>13 firms that we think are going to follow the guidance</p> <p>14 of our office and also look out for the best</p> <p>15 interests of the class and not their own interests.</p> <p>16 Not to say that there are some firms that are out</p> <p>17 there that wouldn't be good ones. It's just that at</p> <p>18 some point in time we ran -- 12 to 13 seemed to be</p> <p>19 as many as we needed to work with.</p> <p>20 You monitor litigation. You engage in,</p> <p>21 you know, strategy issues and know what's going on</p> <p>22 to be able to say, "I'm not comfortable with that"</p> <p>23 or "We need to do something differently."</p> <p>24 But it's a global issue. There are people</p> <p>25 that I don't know personally, obviously -- I don't</p>	<p style="text-align: right;">87</p> <p>1 investors in small pension funds have been able to</p> <p>2 do. So I think in that respect we've accomplished</p> <p>3 our goal.</p> <p>4 Q Attachment A to this letter appears to be</p> <p>5 a securities litigation policy of PERS; do you see</p> <p>6 that?</p> <p>7 A I do. I think this is off their -- the</p> <p>8 website for them.</p> <p>9 Q Is that off their website? Are you</p> <p>10 familiar with the policy?</p> <p>11 A I've seen it. I didn't help write it, but</p> <p>12 I've seen it. I'm not intimately familiar with it,</p> <p>13 but I'm familiar -- I have seen it before.</p> <p>14 Q And you are the person who is at the AG's</p> <p>15 office who is in charge of securities litigation at</p> <p>16 PERS?</p> <p>17 A That's right, but I think Margo Bowers,</p> <p>18 who is now retired -- she was our attorney at PERS.</p> <p>19 I think she helped write this for PERS.</p> <p>20 Q On page 1, I think, about in the second</p> <p>21 big paragraph, the final sentence there it says tha</p> <p>22 "The lead plaintiff might also be in a position to</p> <p>23 reduce fees paid to the attorneys from any</p> <p>24 settlement, thereby resulting in more compensation</p> <p>25 for the investors"; do you see that?</p>
<p style="text-align: right;">86</p> <p>1 know how many people you all know, but tens of</p> <p>2 thousands, hundreds of thousands of people who own</p> <p>3 securities in Diamond Foods. And it's our job if</p> <p>4 they're in the class to look out for their</p> <p>5 interests. It may not necessarily be our particular</p> <p>6 interest, but you have to be global about it. It's</p> <p>7 much like, to me, being mayor. You can't worry</p> <p>8 about the neighborhood you grew up in or the</p> <p>9 elementary school you went to. You have to look out</p> <p>10 for the entire city. So I don't see much difference</p> <p>11 in that.</p> <p>12 BY MS. BRETAN:</p> <p>13 Q Is part of the fiduciary responsibility</p> <p>14 making sure that the choice of class counsel and the</p> <p>15 agreement related to the fees for class counsel is</p> <p>16 in the best interest of the class?</p> <p>17 A Yes, but, you know, it would be nice to</p> <p>18 have a no-fee -- the lawyers do it for free, but it</p> <p>19 doesn't work that way. I presume you get paid based</p> <p>20 on the hour, and the more you work on this case, the</p> <p>21 more you get paid. And so our interest is to try to</p> <p>22 find somebody that for a reasonable fee will do the</p> <p>23 case, and historically institutional investors like</p> <p>24 MPERS has been able to negotiate rates that are</p> <p>25 better than what small investors or individual</p>	<p style="text-align: right;">88</p> <p>1 A I do.</p> <p>2 Q Is that what we were talking about</p> <p>3 earlier, the ability of lead plaintiff to negotiate</p> <p>4 fees that are in the best interest of the class?</p> <p>5 MR. HARNES: I'm going to object to the</p> <p>6 form of the question.</p> <p>7 THE WITNESS: No fee is in the best</p> <p>8 interest of the class, but that's not what's going</p> <p>9 to happen. You're not going to represent Diamond</p> <p>10 Foods for free, and law firms aren't going to</p> <p>11 represent the class members in this case for free.</p> <p>12 So you try to find some reasonable amount.</p> <p>13 We came up with a schedule. We're</p> <p>14 comfortable with it. The court apparently is</p> <p>15 comfortable with it because it was provided to,</p> <p>16 and -- and so we feel like -- that we do a decent</p> <p>17 job with it that way. I mean, there -- some pension</p> <p>18 -- and mainly my experience is with institutional</p> <p>19 investors because we talk -- we work together. Some</p> <p>20 of them bid out each case to look at separately and</p> <p>21 they take bids on legal fees on a percentage or</p> <p>22 contingent fee. We don't. Not to say that their</p> <p>23 system is better than ours or ours is better than</p> <p>24 theirs. It's a policy decision that we make. Some</p> <p>25 have a higher -- they allow higher fees or they</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">89</p> <p>1 don't have a structure at all and they just look at 2 each case differently, look at how many hours are 3 put in it, trying to determine on a lodestar basis 4 whether -- you know, is 16 percent or 27 percent 5 better on that particular case based on the work 6 involved, how far you got into the litigation, the 7 case settled a month prior to trial or did it settle 8 fairly early on in the litigation. And so they 9 don't have an agreement until it's time to file for 10 approval. We happen to have one. 11 BY MS. BRETAN: 12 Q In looking at this sentence we were just 13 talking about, about lead plaintiff may also be in a 14 position to reduce fees paid to attorneys from any 15 settlement, is that part of the fiduciary 16 responsibility to the class that the AG would 17 undertake on behalf of PERS in this action? 18 A That's right. If we were able to either 19 obtain a settlement or obtain a judgment and go to 20 the court and ask for a fee approval, we will sit 21 down with the counsel and take the fee structure and 22 figure out what it is we will propose to the court. 23 Judge Alsup may not approve it. He may cut it. He 24 may give more. I doubt more, but, I mean, that's 25 just his prerogative as a federal judge. I mean,</p>	<p style="text-align: right;">91</p> <p>1 PERS is trying to say here is that there's a theory 2 out there that I don't agree with, Jim Hood doesn't 3 agree with, that if you own a stock and -- let's say 4 you own 10 million shares of Coca Cola and you own 5 it in three different investment accounts, one in 6 index two that are -- analysts make decisions to buy 7 and sell based on their various issues that they -- 8 analysis they do, whether that's a good stock to 9 own, when to buy, when to sell. And if you were to 10 file a lawsuit against Coca-Cola, then because you 11 still own the shares, that -- that whatever either 12 judgment or settlement you may obtain from it is a 13 current -- is going to come from the current 14 resources of the company, and you pay back to the 15 folks who own the stock, which would include PERS in 16 that particular example, for a window, two-year 17 window, let's say, and so there -- it might not be 18 in the interest of the current stockholders to give 19 money to the former stockholders. Literally, it -- 20 I guess you could say it's true, but if you don't do 21 it, if you don't hold the company accountable, then 22 they do whatever they want because they can always 23 say that there are former stockholders and there are 24 current stockholders, and if you take it from the 25 current ones and give it to the former ones, you're</p>
<p style="text-align: right;">90</p> <p>1 it's basically unfettered control over how, you 2 know, the class counsel is compensated. He is much 3 more of a hands-on reviewer of those issues than 4 some other judges that we've dealt with, but that's 5 his prerogative. He got the appointment for life 6 and it's his job, not mine. 7 Q Turning to page 2 -- oh, no. Sorry. Let 8 me stay here. Let me just ask one more question 9 here. In the next paragraph down it says that "In 10 some cases where a large continuing investment 11 position exists, the State may, due to potential 12 conflict between vigorous pursuit of the company and 13 the values of PERS' retained holdings, take a 14 passive role or withdraw its support from the 15 class"; do you see that? 16 A Uh-huh. 17 Q So I'm just trying to understand that. 18 What does that sentence mean? 19 A Well, it's not a legal concept like we 20 would have studied in law school. It's just the 21 National Chamber of Commerce's position always is 22 that nobody ever ought to sue anybody ever, no 23 matter what, and nobody ought to go to jail. 24 I don't happen to subscribe to that theory 25 and neither does my boss. What I'm guessing what</p>	<p style="text-align: right;">92</p> <p>1 punishing the current owners. 2 And, again, the National Chamber of 3 Commerce position would be, "Great," because then 4 nobody would ever be accountable for oil spills, 5 stealing, back-dating stock options, misrepresenting 6 accounting, over- -- misrepresenting -- 7 misrepresenting how much stock options they may take 8 or the rewards, all kinds of fraudulent activity, 9 bribes to foreign officials. 10 So if you just don't do anything because 11 it's going to take money from the current 12 stockholders, then perhaps some people would believe 13 that that's somehow breaching a fiduciary duty. 14 Q So in this case Mississippi PERS had sold 15 all of its stock by November 16th, 2011, correct? 16 A That's the date that sounds familiar, 17 November of '11. 18 Q And would the -- so you're a former 19 stockholder at that point? 20 A That's right. 21 Q And so are their interests there as a 22 former stockholder different than people who still 23 held shares after that point or were purchasing 24 shares after that point? 25 A Mr. Ready, who was the executive director</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">93</p> <p>1 at the time this -- my understanding is this is --</p> <p>2 Q Of PERS?</p> <p>3 A Of PERS at the time this was developed,</p> <p>4 his philosophy would be that this is not a problem</p> <p>5 for PERS because they don't own the stock anymore.</p> <p>6 Q What is not a problem for PERS?</p> <p>7 A Being involved in a case like Diamond.</p> <p>8 Q Let me just go back to my question.</p> <p>9 A Well --</p> <p>10 MS. BRETAN: Could you read back my</p> <p>11 question, please?</p> <p>12 (Record read by the reporter.)</p> <p>13 THE WITNESS: Well, that's not what -- I</p> <p>14 mean, this policy is talking about a problem that</p> <p>15 PERS might have in that it may be a current</p> <p>16 stockholder and that their concern would be we're</p> <p>17 suing ourselves, in essence. It's not the case here</p> <p>18 because I've told you, I guess, at least twice, if</p> <p>19 not more times already, the fiduciary responsibility</p> <p>20 of being a class rep is a higher calling, so to</p> <p>21 speak, than just to a policy that PERS may have</p> <p>22 developed.</p> <p>23 Regardless of what this policy says is --</p> <p>24 when the court is appointed -- in PERS -- and I am</p> <p>25 on behalf of the Attorney General. The focal</p>	<p style="text-align: right;">95</p> <p>1 point on it, the Attorney General decides which</p> <p>2 actions to pursue on behalf of PERS, correct?</p> <p>3 A That's right. That's what the</p> <p>4 constitution says he's supposed to be.</p> <p>5 Q The Mississippi constitution?</p> <p>6 A Right.</p> <p>7 Q And also the Attorney General decides what</p> <p>8 counsel -- legal counsel to retain on PERS'</p> <p>9 behalf --</p> <p>10 A That's right.</p> <p>11 Q -- for this litigation?</p> <p>12 A That's right. If PERS needs a law firm to</p> <p>13 give them guidance on an issue that's complex, then</p> <p>14 that's -- the AG's office finds counsel for them.</p> <p>15 We -- recently PERS was sued as someone who had sold</p> <p>16 a security -- I don't remember the details of it --</p> <p>17 along with others to disgorge the monies that they</p> <p>18 received from an acquisition, and so we're a</p> <p>19 defendant in that case. So we found them counsel.</p> <p>20 That's just -- and it's not just with PERS. It's</p> <p>21 with other agencies.</p> <p>22 Q Okay. And Judge Alsup ultimately granted</p> <p>23 PERS' motion to be appointed lead plaintiff; is that</p> <p>24 correct?</p> <p>25 A I wouldn't be here if he hadn't.</p>
<p style="text-align: right;">94</p> <p>1 point -- our job is to be the fiduciary for the</p> <p>2 class, whatever the court allows the class to be or</p> <p>3 restricts it to be, and, therefore, regardless of</p> <p>4 this policy or anything else, my job is to look out</p> <p>5 for the interests of the class first and foremost.</p> <p>6 That's what I have to do.</p> <p>7 BY MS. BRETAN:</p> <p>8 Q Turning to pag 2, there's a provision at</p> <p>9 the bottom there, "Retention of Outside Counsel."</p> <p>10 A Okay.</p> <p>11 Q Can you just read that sentence for me,</p> <p>12 please?</p> <p>13 A The -- the one that starts "If a</p> <p>14 recommendation"?</p> <p>15 Q Correct.</p> <p>16 A "If a recommendation to pursue an active</p> <p>17 role in seeking recovery of financial damages is</p> <p>18 received, the Attorney General, Mississippi, will</p> <p>19 determine what action, if any, that should be taken.</p> <p>20 Should the decision --" keep going?</p> <p>21 Q Yes, please.</p> <p>22 A "Should the decision be made to pursue</p> <p>23 litigation, the Attorney General will retain or</p> <p>24 provide legal counsel on PERS' behalf."</p> <p>25 Q So the Attorney General -- to put a fine</p>	<p style="text-align: right;">96</p> <p>1 Q That's right.</p> <p>2 Okay. Exhibit 8.</p> <p>3 (Exhibit 8 was marked for</p> <p>4 identification by the court reporter.)</p> <p>5 BY MS. BRETAN:</p> <p>6 Q Are you familiar with Exhibit 8,</p> <p>7 Mr. Neville?</p> <p>8 A Yes, I've seen it.</p> <p>9 Q And that's the order appointing lead</p> <p>10 plaintiff in this case?</p> <p>11 A That's right.</p> <p>12 Q It's March 20th, 2012?</p> <p>13 A Yes.</p> <p>14 Q Okay. And turning to the conclusion, page</p> <p>15 12, line -- Judge Alsup talks about lead plaintiff</p> <p>16 moving for class counsel, selecting class counsel.</p> <p>17 And at line 15 he says the order says, "The motion</p> <p>18 should be accompanied by declarations from lead</p> <p>19 plaintiff explaining the due diligence undertaken</p> <p>20 with respect to the selection of class counsel"; do</p> <p>21 you see that?</p> <p>22 A Yes.</p> <p>23 Q And that "Those declarations should</p> <p>24 explain why counsel was selected in favor of other</p> <p>25 potential candidates"; do you see that?</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">97</p> <p>1 A Right, Uh-huh.</p> <p>2 Q And then PERS goes ahead and PERS files</p> <p>3 its motion for appointment of lead and local</p> <p>4 counsel, correct?</p> <p>5 A Yes.</p> <p>6 MS. BRETAN: This is Exhibit 9.</p> <p>7 (Exhibit 9 was marked for</p> <p>8 identification by the court reporter.)</p> <p>9 BY MS. BRETAN:</p> <p>10 Q Exhibit 9, Mr. Neville, is the motion by</p> <p>11 Mississippi PERS for approval of lead and local</p> <p>12 counsel; is that correct?</p> <p>13 A It's a notice and a motion.</p> <p>14 Q And turning to page 2, which is the</p> <p>15 notice --</p> <p>16 A Okay.</p> <p>17 Q -- at line eight it says that "Mississippi</p> <p>18 PERS is moving for an order approving and appointing</p> <p>19 Chitwood Harley Harnes and Grant & Eisenhofer as</p> <p>20 co-lead counsel and Lief Cabraser as local counsel;</p> <p>21 is that correct?</p> <p>22 A That's right.</p> <p>23 Q And when was this motion filed?</p> <p>24 A This says April 24th of 2012.</p> <p>25 Q And you submitted a declaration under seal</p>	<p style="text-align: right;">99</p> <p>1 Q And that was filed on April 24th, 2012; is</p> <p>2 that correct?</p> <p>3 A It looks like it, yeah.</p> <p>4 Q And in that motion Mississippi PERS sought</p> <p>5 to have the Chitwood firm and Grant & Eisenhofer</p> <p>6 appointed as lead counsel and Lief Cabraser as</p> <p>7 local counsel, correct?</p> <p>8 A That's right.</p> <p>9 Q We've marked Exhibit 10. You can keep</p> <p>10 that next to you. What is -- are you familiar with</p> <p>11 Exhibit 10?</p> <p>12 A Uh-huh. It's our retention agreement.</p> <p>13 Q And that's a retention agreement entered</p> <p>14 into with the Chitwood firm?</p> <p>15 A That's right.</p> <p>16 Q And is this the agreement that governs</p> <p>17 this case?</p> <p>18 A Yes.</p> <p>19 Q And can you tell me when it was entered</p> <p>20 into? It's on page 2 at the top.</p> <p>21 A April 24th, 2012.</p> <p>22 Q Okay. And that's the same day that --</p> <p>23 that MPERS moved for appointment of the lead</p> <p>24 plaintiff and lead counsel; is that correct?</p> <p>25 A That's correct.</p>
<p style="text-align: right;">98</p> <p>1 -- turn to page 3. It said -- footnote one says</p> <p>2 you've submitted a declaration under seal in support</p> <p>3 of that motion; is that correct?</p> <p>4 A That's right.</p> <p>5 Q Okay. So at the time of the motion it was</p> <p>6 still contemplated by MPERS that the Chitwood firm</p> <p>7 and Grant & Eisenhofer would be co-lead counsel and</p> <p>8 Lief Cabraser as local counsel?</p> <p>9 A That was our -- our thought process, yes.</p> <p>10 (Exhibit 10 was marked for</p> <p>11 identification by the court reporter.)</p> <p>12 THE VIDEOGRAPHER: Excuse me, Counsel.</p> <p>13 This marks -- this marks the end of tape number one</p> <p>14 in the deposition of George Neville. We're going</p> <p>15 off the record, and the time is 11:03 a.m.</p> <p>16 (Recess.)</p> <p>17 THE VIDEOGRAPHER: We're back on the</p> <p>18 record, and this marks the beginning of tape number</p> <p>19 two in the deposition of George Neville. The time</p> <p>20 is 11:09. Go ahead, please.</p> <p>21 BY MS. BRETAN:</p> <p>22 Q So before the break we were talking about</p> <p>23 Exhibit 9, which is the motion for appointment of</p> <p>24 lead and local counsel.</p> <p>25 A Okay.</p>	<p style="text-align: right;">100</p> <p>1 Q And looking at page 2 --</p> <p>2 A Of Exhibit 9 or 10?</p> <p>3 Q Of Exhibit 10. It seems that the</p> <p>4 agreement only applies to the Chitwood firm; is that</p> <p>5 correct?</p> <p>6 A Well, that is the firm that is retained,</p> <p>7 but they have the authority to bring in other</p> <p>8 counsel if they -- with our approval. Look on</p> <p>9 paragraph six, page 4. We -- it's our policy -- we</p> <p>10 don't -- we -- I think one time we didn't do this,</p> <p>11 but -- and that -- we may not have even done it</p> <p>12 then, but we sign a retention agreement with one law</p> <p>13 firm and then give authority based on whatever the</p> <p>14 circumstances may be that -- of other law firms that</p> <p>15 may be involved in litigation, but the retention</p> <p>16 agreement is with one, and then they do a joint</p> <p>17 effort agreement or whatever they may want to call</p> <p>18 it.</p> <p>19 Q So did the Attorney General's office on</p> <p>20 behalf of MPERS give approval for the Chitwood firm</p> <p>21 to, pursuant to paragraph six here, associate other</p> <p>22 attorneys at its own expense?</p> <p>23 A That's right.</p> <p>24 Q Do you know if that's -- there's an</p> <p>25 agreement to that effect?</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">101</p> <p>1 A We gave them the authority that they would</p> <p>2 be able to use and could use G&E as long as the</p> <p>3 court approved it.</p> <p>4 Q And is that just a verbal okay or is that</p> <p>5 reflected in writing anywhere?</p> <p>6 A I imagine I just told it to them because</p> <p>7 it's been our policy all along, is that they -- they</p> <p>8 have to notify us who they're going to use if they</p> <p>9 want to bring in a firm.</p> <p>10 We have cases -- not necessarily</p> <p>11 securities cases, but we have some complex</p> <p>12 anti-trust or consumer-type cases or health care</p> <p>13 fraud cases, and we may have a retention agreement</p> <p>14 with a particular firm, but we know from having met</p> <p>15 with a group if there's a group that might want to</p> <p>16 work on the litigation who is involved, and then</p> <p>17 they do some sort of a agreement amongst themselves.</p> <p>18 Q And what other firms did the Chitwood firm</p> <p>19 associate in this case?</p> <p>20 A Well, it was -- G&E was going to be</p> <p>21 co-lead counsel, and then Lieff Cabraser was going</p> <p>22 to be local counsel. That's not what the court --</p> <p>23 what the court approved.</p> <p>24 Q How did -- was it the recommendation of</p> <p>25 the Attorney General that Grant & Eisenhofer be</p>	<p style="text-align: right;">103</p> <p>1 any kind of analysis for it.</p> <p>2 Q In paragraph four it says, "The Attorney</p> <p>3 General shall maintain responsibility for the public</p> <p>4 distribution of information concerning this matter."</p> <p>5 A Right.</p> <p>6 Q It goes on. What is that -- what is that</p> <p>7 provision about?</p> <p>8 A It's the same provision that's in all the</p> <p>9 other retention agreements, securities or</p> <p>10 non-securities, and if it -- the local press called</p> <p>11 up the law firm because they saw their name on the</p> <p>12 pleadings and started asking them about it, the law</p> <p>13 firm needs to refer to us.</p> <p>14 Q And I'm going to -- the retention</p> <p>15 agreement has two fee agreements attached as</p> <p>16 exhibits. The first one appears to relate only to</p> <p>17 matters settled prior to the initiation of</p> <p>18 litigation.</p> <p>19 A Right.</p> <p>20 Q You know, at the time of this agreement</p> <p>21 obviously litigation had been initiated.</p> <p>22 A That's right.</p> <p>23 Q So that's not really pertinent here,</p> <p>24 correct?</p> <p>25 A That's correct.</p>
<p style="text-align: right;">102</p> <p>1 associated and Lieff Cabraser be associated as lead</p> <p>2 and local -- co-lead and local counsel,</p> <p>3 respectively?</p> <p>4 A He approved it. It was my recommendation.</p> <p>5 Q Your recommendation to the Chitwood firm?</p> <p>6 A It was my recommendation to the Attorney</p> <p>7 General that we would -- that Chitwood would be the</p> <p>8 signator on the retention agreement, G&E would work</p> <p>9 with them and Lieff Cabraser would be local counsel,</p> <p>10 and he agreed to that.</p> <p>11 Q Turn to paragraph three of the agreement</p> <p>12 that's on page 3, the top.</p> <p>13 MR. HARNES: What is the order?</p> <p>14 BY MS. BRETAN:</p> <p>15 Q It says, "The Attorney General and the law</p> <p>16 firm both recognize that the claims present numerous</p> <p>17 factual and legal obstacles"; do you see that?</p> <p>18 A Uh-huh.</p> <p>19 Q What are the factual and legal obstacles</p> <p>20 in this case?</p> <p>21 A This is standard language we use, I think,</p> <p>22 in every retention agreement. I think it will -- as</p> <p>23 we flesh out this litigation in court, we'll best be</p> <p>24 able to determine what you all perceive to be</p> <p>25 factual and legal obligations, but I haven't done</p>	<p style="text-align: right;">104</p> <p>1 Q So I'd like to turn to Exhibit B in just a</p> <p>2 minute, but just staying on this same page, on</p> <p>3 page 3 it says under section B that "All reasonable</p> <p>4 and necessary costs of the litigation, in short, are</p> <p>5 reimbursed from the recovery in the case"; is that</p> <p>6 right, to the law firm?</p> <p>7 A We allow them to file for reimbursement</p> <p>8 for those expenses from any settlement or judgment.</p> <p>9 Q Let's turn to Exhibit B. And just --</p> <p>10 sorry. Just -- you signed this agreement on behalf</p> <p>11 of the Attorney General?</p> <p>12 A No, GM is Geoffrey Morgan.</p> <p>13 Q Oh.</p> <p>14 A He's the chief of staff.</p> <p>15 Q Oh, that's the chief of staff.</p> <p>16 A I'm GN. He's GM.</p> <p>17 Q Okay. My Ms and the Ns were confused.</p> <p>18 A That's all right.</p> <p>19 Q Let's look at Exhibit B.</p> <p>20 A We can abbreviate our names GEO period;</p> <p>21 we'd both be the same.</p> <p>22 Q So Exhibit B appears to set forth a</p> <p>23 contingent fee schedule for cases that are already</p> <p>24 in litigation; is that correct?</p> <p>25 A That's right.</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">105</p> <p>1 Q And is this the fee agreement that applies</p> <p>2 in this case?</p> <p>3 A Yes.</p> <p>4 Q Okay. And so if I'm reading it correctly,</p> <p>5 if there's a recovery by the State of Mississippi up</p> <p>6 to 25 million, there's a sort of tiered percentages</p> <p>7 of -- with respect to fees; is that -- is that</p> <p>8 right, based on certain criteria?</p> <p>9 A Yeah, this really speaks for itself. I</p> <p>10 mean, I think it's pretty clear cut.</p> <p>11 Q Okay. And turning to the explanatory note</p> <p>12 on page 8, I just want to ask, just so I'm</p> <p>13 understanding it correctly, sort of midway down --</p> <p>14 A Of the page or the paragraph?</p> <p>15 Q The first paragraph. It talks about the</p> <p>16 fee -- the incremental dollar amounts falling within</p> <p>17 each subcategory and various -- and multiplying the</p> <p>18 incremental amount. What's an incremental amount?</p> <p>19 A This was developed because we always had</p> <p>20 understood if you had a recovery of, let's say,</p> <p>21 \$100 million, that you wouldn't say, "Well, it's the</p> <p>22 third to --" after filing the complaint in the</p> <p>23 middle -- after filing the complaint after discovery</p> <p>24 and completing waiting trial, 14 percent -- it</p> <p>25 wouldn't be 14 percent of the 100 million. It would</p>	<p style="text-align: right;">107</p> <p>1 State of Mississippi after 25 million," in the first</p> <p>2 tranche there. So is that -- does that really mean</p> <p>3 to say recovery on behalf of the class?</p> <p>4 A In this particular -- I'm sorry. I</p> <p>5 interrupted you.</p> <p>6 Q Do you mean class recovery or recovery to</p> <p>7 Mississippi PERS?</p> <p>8 A In this particular case it's going to be</p> <p>9 the class.</p> <p>10 Q Okay.</p> <p>11 (Exhibit 11 was marked for</p> <p>12 identification by the court reporter.)</p> <p>13 BY MS. BRETAN:</p> <p>14 Q So Exhibit 11 is the order appointing</p> <p>15 class counsel. Do you recognize this document?</p> <p>16 A Yes, uh-huh.</p> <p>17 Q And it notes -- in the first paragraph of</p> <p>18 the order it notes that Mississippi PERS had</p> <p>19 submitted declarations explaining its due diligence</p> <p>20 in selecting counsel and why counsel was favored</p> <p>21 over other -- over other candidates; is that right?</p> <p>22 A Yes.</p> <p>23 Q And that was the declaration that the</p> <p>24 earlier order had referred to; is that correct?</p> <p>25 A We submitted everything the court asked us</p>
<p style="text-align: right;">106</p> <p>1 actually be the percentage for the first 25. It</p> <p>2 would be the percentage for the 25 to 75, and then</p> <p>3 the last \$25 million would be in this fee, and you</p> <p>4 would add those three things together.</p> <p>5 This is what we understood all along, but</p> <p>6 one of the people we entered in the agreement with,</p> <p>7 the non-securities case, felt like they -- it would</p> <p>8 be helpful to have this explanatory note so there</p> <p>9 wouldn't be some confusion down the road if I</p> <p>10 dropped dead or the General dropped dead or</p> <p>11 something and there was nobody to say, "Oh, yeah,</p> <p>12 that's what it meant." And you wouldn't go right to</p> <p>13 that figure because, in essence -- simplistically</p> <p>14 you could say that, but that's not what it meant.</p> <p>15 So we devised this explanatory note with an example</p> <p>16 just to make sure that folks would understand what</p> <p>17 the agreement meant.</p> <p>18 Q So the incremental amount is the</p> <p>19 additional amount that falls in the next category --</p> <p>20 the additional amount of recovery?</p> <p>21 A You take that which applies -- falls into</p> <p>22 each one of those categories and you add them</p> <p>23 together.</p> <p>24 Q Okay. And just to clarify one more thing</p> <p>25 about the Exhibit B, it says, "For recovery by the</p>	<p style="text-align: right;">108</p> <p>1 to.</p> <p>2 Q Okay. And turning the page there, it</p> <p>3 looks like the court appointed the Chitwood firm and</p> <p>4 Lieff Cabraser but not Grant & Eisenhofer; is that</p> <p>5 correct?</p> <p>6 A That's right.</p> <p>7 Q And I understand the court ordered that</p> <p>8 the proposals and the selection process is --</p> <p>9 remains under seal; so I'm not going to ask you</p> <p>10 specifically about that here, but is -- is -- I know</p> <p>11 we spoke earlier about Grant & Eisenhofer being</p> <p>12 associated by the Chitwood firm. Are they still</p> <p>13 associated in this case by the Chitwood firm</p> <p>14 notwithstanding this order?</p> <p>15 A I don't know what agreement they -- if</p> <p>16 they ever reached anything in writing, but if the</p> <p>17 court were to allow G&E to participate in the case,</p> <p>18 then they will, but as far as I know right now,</p> <p>19 they're not allowing them to.</p> <p>20 The last sentence of this paragraph says,</p> <p>21 "Three law firms will not be appointed due to the</p> <p>22 risk of wasteful, duplicative effort," and that was</p> <p>23 the court's position. Again, we -- we just -- this</p> <p>24 was an unusual circumstance for us. Judge Alsup is</p> <p>25 -- handles things different than most all the judges</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">109</p> <p>1 in the country, but that's his prerogative. And he 2 felt like because Lieff Cabraser is a -- does a lot 3 of securities work, they're a very good firm, 4 they're on our monitoring list, that if they're 5 going to be local counsel, they might as well be 6 engaged --</p> <p>7 MR. HARNES: Can I interrupt for just a 8 second? I'm sorry. I have no issue with this 9 witness discussing anything that was submitted to 10 the court, particularly since obviously it was 11 submitted to the court and the court -- I'm just 12 very sensitive to this witness -- the lead plaintiff 13 is ordered to maintain the confidence of all 14 proposals and not to discuss the selection process.</p> <p>15 MS. BRETAN: I understand, and I'm not 16 interested --</p> <p>17 MR. HARNES: I'm trying --</p> <p>18 MS. BRETAN: -- in --</p> <p>19 MR. HARNES: I'm trying not to be 20 obstructive because I really don't care. If it were 21 not for the court's order, I'd be happy for him to 22 discuss anything that was submitted to the court.</p> <p>23 MS. BRETAN: I don't --</p> <p>24 MR. HARNES: Obviously, it's all out there 25 already.</p>	<p style="text-align: right;">111</p> <p>1 We have a great local counsel, as -- I 2 don't know how many of these securities cases you've 3 done, but a lot of times local counsel is maybe a 4 one- or a two-man shop that's local to the community 5 that -- but in this case we chose Lieff Cabraser 6 because they were a monitoring firm. They were a 7 monitoring firm; so it made sense to use them. So 8 the court's position is he's appointing them class 9 counsel, not just local counsel. That's what it 10 says right here.</p> <p>11 Q I understand that the fee structure 12 doesn't change no matter how many attorneys you have 13 in the room, but -- but having multiple law firms 14 would change -- it could potentially impact the 15 costs that are associated with prosecuting the 16 action, correct?</p> <p>17 A It could, but, I mean, we could -- you 18 know, sometimes it's better to have more, but I -- 19 you know, we just -- we're following whatever the 20 judge's guidelines are on it.</p> <p>21 MS. BRETAN: Okay. 22 (Exhibit 12 was marked for 23 identification by the court reporter.)</p> <p>24 MS. BRETAN: Can you hold on to that for a 25 second?</p>
<p style="text-align: right;">110</p> <p>1 MS. BRETAN: I appreciate that, 2 Mr. Harnes, and I --</p> <p>3 MR. HARNES: But I'm just sensitive -- I'm 4 sorry. I just wanted to caution the witness not to 5 be too specific.</p> <p>6 MS. BRETAN: I understand that, 7 Mr. Harnes, and I'm not going to ask him about what 8 was submitted to the court in the due diligence 9 process.</p> <p>10 Q But looking at the order here, it does say 11 that the court felt that three law firms would not 12 be appointed due to the risk of wasteful, 13 duplicative effort, and what's your understanding of 14 that?</p> <p>15 A The attorneys aren't paid on an hourly 16 basis like you are. So if you brought four lawyers 17 to the -- to this deposition, that would cost 18 Diamond whatever your rate is times four.</p> <p>19 I can bring 15 lawyers to the table and 20 they aren't going to get a fee any larger than what 21 the court is going to award based on a fee structure 22 or whatever the court thinks is prudent. So I'm not 23 really sure what the judge's concerns were about 24 this, but, be that as it may, he's got it in his 25 order and so we are bound by it.</p>	<p style="text-align: right;">112</p> <p>1 Q Are you familiar with the terms "pay to 2 play" or "pay to sue"?</p> <p>3 A I have heard of those terms, yes.</p> <p>4 Q And what's your understanding of what 5 those terms are about?</p> <p>6 A It's a National Chamber of Commerce's very 7 false, misleading accusations trying to pass tort 8 reform across the country, to appoint very 9 conservative federal judges and state -- and elect 10 state court judges so that they aren't held 11 accountable for the wrongful actions that they 12 commit.</p> <p>13 One of the things that they try to say is 14 that the only way that a law firm is going to get a 15 case by -- for any office holder is they contribute 16 to their campaign. So that's what the "pay" is, as 17 I understand it. So if you don't contribute, you 18 don't get to, quote, play.</p> <p>19 It's horrific PR bullshit, and I take 20 great offense to it, but I'm a public servant, and I 21 don't have any -- I don't have Fox News to trumpet 22 my BS, and I don't have the money that the National 23 Chamber of Commerce has to overcome the BS; so we 24 just trudge on and do our job.</p> <p>25 Q So the pay in "pay to play" or "pay to</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">113</p> <p>1 sue" is about political campaign contributions?</p> <p>2 A That's my understanding.</p> <p>3 Q Okay.</p> <p>4 A And they apply to contractors with the</p> <p>5 governor or the mayor. I mean, it's whatever -- it</p> <p>6 is an attempt to try to disparage office holders, as</p> <p>7 I appreciate it. You asked me about it because in</p> <p>8 the context of these cases it would apply to my</p> <p>9 boss, but -- because he is the Attorney General.</p> <p>10 But it's certainly something they'll castigate the</p> <p>11 mayor of San Francisco or the governor of Ohio about</p> <p>12 doing.</p> <p>13 Q So "pay to play" or "pay to sue" applies</p> <p>14 to your boss, as an elected official?</p> <p>15 A He has to run for office, and so he raises</p> <p>16 campaign funds, and so the criticism has been that</p> <p>17 he raises funds from people that often have --</p> <p>18 involved in litigation on behalf of the State.</p> <p>19 Q Are you familiar with House Bill 211? I</p> <p>20 think that's called the Sunshine Act.</p> <p>21 A That's the most ridiculous name in the</p> <p>22 world, but I am vaguely familiar with it. I'm very</p> <p>23 intimately familiar with it.</p> <p>24 Q And what is it?</p> <p>25 A It is an attempt to carry the water for</p>	<p style="text-align: right;">115</p> <p>1 corporate wrongdoers accountable. We run into it</p> <p>2 over and over again with so-called tort reform,</p> <p>3 which is all it is, is an inability to be able to</p> <p>4 hold corporate wrongdoers accountable.</p> <p>5 Q How does the Sunshine Act prevent lawsuits</p> <p>6 from being filed?</p> <p>7 A Well, the idea is that --</p> <p>8 MR. HARNES: Can I interrupt for just a</p> <p>9 second? I'm going to allow this witness, but I'm</p> <p>10 just curious as to what topic identified in the</p> <p>11 30(b)(6) motion --</p> <p>12 MS. BRETAN: Six.</p> <p>13 MR. HARNES: Six. And how does the</p> <p>14 Sunshine law have anything to do with anything in</p> <p>15 question six?</p> <p>16 MS. BRETAN: Adequacy.</p> <p>17 MR. HARNES: What --</p> <p>18 MS. BRETAN: Adequacy.</p> <p>19 MR. HARNES: In what respect?</p> <p>20 MS. BRETAN: Well, I don't need to justify</p> <p>21 any line of questioning to you. I believe it</p> <p>22 relates completely to adequacy and the adequacy of</p> <p>23 this AG to represent Mississippi PERS in a class in</p> <p>24 this case.</p> <p>25 MR. HARNES: Well, can you clue me into</p>
<p style="text-align: right;">114</p> <p>1 the National Chamber of Commerce by the Mississippi</p> <p>2 legislature, the new speaker, who didn't get hired</p> <p>3 by our office to do -- get involved in a case that</p> <p>4 he wanted his law firm to be involved with, which is</p> <p>5 a conflict of interest. So part of his punishment</p> <p>6 in carrying the water for whatever that organization</p> <p>7 is, the National Legislative Conference something --</p> <p>8 I don't know -- that the Chamber of Commerce funds,</p> <p>9 gave it model -- gave model legislation they wanted</p> <p>10 passed to try to keep people from being able to hold</p> <p>11 them accountable.</p> <p>12 Q So does the Sunshine Act relate to those</p> <p>13 concepts we were discussing, the "pay to play" and</p> <p>14 "pay to sue" concepts?</p> <p>15 A Not really. All it is is an attempt to</p> <p>16 try to stop the ability to file the lawsuits and</p> <p>17 limit the ability to file cases to hold wrongful</p> <p>18 corporate wrongdoers accountable.</p> <p>19 Q Would it be fair to say that the Sunshine</p> <p>20 Act related to concerns raised about contingency fee</p> <p>21 contracts being awarded to people donating to</p> <p>22 political campaigns?</p> <p>23 A It doesn't stop it; so it has nothing to</p> <p>24 do with that. It's all a political ploy to stop</p> <p>25 people from being able to file lawsuits to hold the</p>	<p style="text-align: right;">116</p> <p>1 the nexus between one or the other?</p> <p>2 MS. BRETAN: We'll get there, Mr. Harnes.</p> <p>3 MR. HARNES: I'm not saying this witness</p> <p>4 -- but you're asking him legal opinions, and it's</p> <p>5 just --</p> <p>6 MS. BRETAN: I'm just asking him his</p> <p>7 understanding of what the Sunshine Act is.</p> <p>8 THE WITNESS: It's not sunshine, but,</p> <p>9 anyway, that's what -- it was, again a propaganda</p> <p>10 tool.</p> <p>11 BY MS. BRETAN:</p> <p>12 Q It was a propaganda tool?</p> <p>13 A The term "Sunshine Act" is a propaganda</p> <p>14 tool.</p> <p>15 Q How does the Sunshine Act or House Bill --</p> <p>16 let's go with House Bill 211 -- how does that</p> <p>17 prevent lawsuits from being filed?</p> <p>18 A It attempts to -- well, not securities</p> <p>19 cases, but -- and it was admitted to by a</p> <p>20 pharmaceutical attorney the other day in court; so</p> <p>21 it's finally nice to have somebody on the record to</p> <p>22 admit that the whole attempt -- part of it was to</p> <p>23 keep attorneys from being able to obtain any kind of</p> <p>24 a fee from the contingent fee contract off of</p> <p>25 penalties and punitive damages.</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">117</p> <p>1 So if a corporation is peddling goods in 2 Mississippi that are fraudulent or dangerous, or 3 whatever it might be, and under our Consumer 4 Protection Act we file a claim, try to hold them 5 accountable for it, the cost per product or the 6 number of products sold in the state may not be, you 7 know, millions of items or tens of millions of 8 dollars. So the contract -- I mean, under the -- 9 House Bill 211 says you can only collect a 10 contingent fee off of the actual damages the state 11 may have suffered, not any at all on the penalties 12 and fees, and so, as the pharmaceutical lawyer said 13 the other day, it just prohibits -- it keeps the 14 incentive for law firms to want to bring these kinds 15 of cases because they wouldn't be able to afford to 16 bring a case that may have a \$200 million penalty 17 component and only -- and I'm just throwing out 18 figures -- a \$7 million actual damages component. 19 It becomes economically not practical, just like a 20 business has to do an analysis, "Do I want to go 21 into this market or not? Do I -- do I want to open 22 hotels in this -- in this locale?" They have to do 23 a cost-benefit analysis. 24 Well, law firms have to do the same thing 25 when they come to us and say, "We're aware of this</p>	<p style="text-align: right;">119</p> <p>1 Q And with respect to contingency fee 2 contracts, it sets the -- House Bill 211 sets new 3 limits on percentages applicable to certain 4 recoveries; is that correct? 5 A That's right. It's different than the 6 retention agreement there. 7 Q Is it different? How is it different? 8 A I don't know. Pick up the papers and look 9 at them. You're grown. You can read. Just -- 10 they're different tables. I don't remember -- 11 Q And -- 12 A -- the specifics. 13 Q Sorry. Was -- if you recall, is the -- 14 are the percentages in the retention agreement with 15 the Chitwood firm in this case higher than -- than 16 allowed under the House Bill 211? 17 A I think it's on the lower end of 18 recoveries. It's -- the new legislation has a 19 higher percentage, but all that's irrelevant because 20 it doesn't apply to this case. This case was filed 21 before the law went into effect. So it's 22 irrelevant. That's why I'm sitting here puzzled why 23 you're making all of this as an issue because it has 24 nothing to do with it. 25 We've been approved as class rep after</p>
<p style="text-align: right;">118</p> <p>1 wrongdoing, and we want to try to hold folks 2 accountable for that, and in order to be able to do 3 it, we want to be compensated because, just like 4 you, we want to get paid." Well, they want to take 5 the incentive out of being paid. It means it's 6 harder to bring cases. 7 Q Does that apply in the securities class 8 action context? 9 A I don't think so, no. 10 Q Okay. So let's focus on securities class 11 action. 12 A Well, you didn't ask me to focus on 13 securities class action. 14 Q I'm going to now. So with respect to 15 securities class action that penalties and issue 16 isn't really a limiting factor, correct? 17 A I'm not sure it's a limiting factor at all 18 because the PL -- PLSRA controls completely over how 19 lawyers are compensated. So the court is going to 20 make some determination about, you know, what the 21 fee structure is going to be regardless of what the 22 statute says, right? If Judge Alsup says, "Well, 23 I'm not going to give but 8 percent," even though 24 the fee structure in the statute might say more, 25 that's what it's going to be.</p>	<p style="text-align: right;">120</p> <p>1 certification over and over again, and we get asked 2 the same inane questions that you're asking here. 3 You're wasting my time and you're wasting your time. 4 It's irrelevant. This case was filed in -- by 5 someone else. We came in, saw it was a good case, 6 and we've done that. We've done a good job on cases 7 in the past, and we're going to continue to do good 8 jobs on these cases, and so, you know, rehashing the 9 same old crap that I've listened to before, you 10 know, is just -- it's silly. It really is silly. 11 Q So can you get Exhibit 12, please. 12 Exhibit 12 is a copy of the House Bill 211 as sent 13 to the governor of Mississippi. 14 A Okay. 15 Q Do you see that? 16 A I do. 17 Q Turning to page 5, page 5 is the section 18 758. My understanding is this is the new -- new 19 provision. 20 A I don't know, but it doesn't apply. 21 Q Okay. 22 A We've already had a case filed and we 23 already had a retention agreement on July 1 of 2012. 24 Q Okay. And turning to paragraph two under 25 section 758-2A, it says, "The State, an arm or</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">121</p> <p>1 agency of the State, or statewide elected official 2 acting in its official capacity may not enter into a 3 contingency fee contract that provides for the 4 outside attorney to receive a contingency fee 5 exclusive of reasonable costs and expenses incurred 6 in connection with the case, which is in excess of 7 the following --" 8 A Where -- 9 Q -- and -- 10 A Excuse me. Where are you? 11 Q I'm at paragraph two, line 52. And then 12 it sets out certain provisions of recovery similar 13 to percentages set out in the retention agreement, 14 correct? 15 A There -- it's a schedule. It reads for 16 itself. Again, it doesn't apply to this case. Why 17 are we talking about this? 18 MS. BRETAN: Can you mark as 19 Exhibit 13 ... 20 (Exhibit 13 was marked for identification 21 by the court reporter.) 22 BY MS. BRETAN: 23 Q Exhibit 13 is an overview of the history 24 of House Bill 211 -- 25 A Okay.</p>	<p style="text-align: right;">123</p> <p>1 July 1st of 2012. So what difference does it make 2 when it passed a committee or when it passed the 3 house or when it was signed by the governor? 4 Q Who is the governor of Mississippi? 5 A Phil Brian. 6 Q And do you know if he was in favor of this 7 bill or expected to sign it? 8 A My understanding, he was in favor of it. 9 Q So he was -- by the time lead plaintiff 10 had filed its motion for appointment of lead 11 counsel -- 12 A It's irrelevant. 13 Q -- it had passed? 14 A I'm not answering any more of the 15 questions. The law reads for itself. You can read 16 it. I can read it. You can read it and tell me 17 what it means or I can read it and tell you what it 18 means. It's irrelevant. It's not the law in this 19 case. 20 MR. HARNES: Could we take a short break? 21 MS. BRETAN: Short one. 22 THE VIDEOGRAPHER: I'll get us off the 23 record. 24 MS. BRETAN: Actually, sorry. Let's 25 finish the questioning on this document. Sorry.</p>
<p style="text-align: right;">122</p> <p>1 Q -- do you see that? 2 A Okay. 3 Q And if you look at the section under 4 "History of Actions" -- 5 A Okay. 6 Q -- it looks like at line nine the bill 7 passed the house on February 15th; is that right? 8 A I don't know. I'm not familiar with this. 9 Q Have you seen a legislative history 10 before, Mr. Neville? 11 A If I have, I don't have any specific 12 memory of it. It's not my role in the office 13 that -- we have different attorneys that deal with 14 various laws that are being passed that have 15 something to do with our -- we have people who work 16 with legislature. We have people who interpret laws 17 on behalf of the state. That's not me. 18 Q So line nine, on February 15th it looks 19 like it passed the house of the Mississippi 20 legislature, and line 16 -- you see that? -- on the 21 10th of April it looks like the Bill passed as 22 amended the senate of Mississippi; is that right? 23 A I have no idea. I don't know what -- I 24 mean, I'm still struggling figuring out what all of 25 this is relevant to. It didn't go into effect until</p>	<p style="text-align: right;">124</p> <p>1 Q Did the Attorney General's office or its 2 counsel let the court know that this act had passed 3 by the time it submitted -- passed the house and 4 senate of Mississippi by the time it submitted its 5 motion for approval of lead plaintiff -- lead 6 counsel in this action? 7 MR. HARNES: I'm going to object to the 8 question, advise the witness not to answer the 9 question. The submissions were done under seal 10 under order of the court, and until -- you know, if 11 you want to get some relief from that order, I'm 12 delighted to answer that question. 13 MS. BRETAN: I'm not interested in the due 14 diligence in selecting counsel. 15 MR. HARNES: The papers were filed -- 16 MS. BRETAN: I just -- 17 MR. HARNES: -- under seal. There was a 18 reason that the court required us to file under 19 seal, and you can -- you can interpret that as 20 broadly, as narrowly as you want. The court is well 21 aware of what we submitted; so anything we decide 22 here today is not going to inform the court. So I'm 23 just telling you: I am not going to let this 24 witness answer questions as to the contents of any 25 filing that pursuant to this court's order were</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">125</p> <p>1 filed under seal.</p> <p>2 MS. BRETAN: Okay.</p> <p>3 Q Do you know if counsel proposed as lead</p> <p>4 counsel in this case has given money directly or</p> <p>5 indirectly to the political campaign of the Attorney</p> <p>6 General, Jim Hood?</p> <p>7 A I hope you have. I don't know who all has</p> <p>8 given money to them. I don't know. Probably. Have</p> <p>9 you? I've contributed. Thousands of people have</p> <p>10 contributed.</p> <p>11 Q So you don't know if the Chitwood firm has</p> <p>12 given money to the campaign?</p> <p>13 A They probably have. I hope they have.</p> <p>14 Q Did you ever try and find out whether lead</p> <p>15 counsel proposed in this action had given money to</p> <p>16 the political campaign of --</p> <p>17 A It's --</p> <p>18 Q -- Attorney General Hood?</p> <p>19 A It's not an issue for me. I don't -- I</p> <p>20 don't track political contributions.</p> <p>21 Q So you didn't ever try to find out whether</p> <p>22 lead counsel approved by the Attorney General in</p> <p>23 this case had donated to his political campaign?</p> <p>24 A I don't know how many times I've got to</p> <p>25 answer it. It's not relevant for me. I don't go</p>	<p style="text-align: right;">127</p> <p>1 Q Do you know who the members of DAGA are?</p> <p>2 A Democrats who are elected, if they choose,</p> <p>3 I suppose. I don't think it's mandatory. If you're</p> <p>4 elected as a Democrat as an Attorney General in a</p> <p>5 state, you can join. Democrat Attorney General's</p> <p>6 Association.</p> <p>7 Q Okay. What are the --</p> <p>8 A RAGA is Republican Attorney General's</p> <p>9 Association. If you're elected as a Republican, I</p> <p>10 guess if you want to, you can be a member of RAGA.</p> <p>11 Q What does DAGA do?</p> <p>12 A I don't know. I'm not -- I don't go to</p> <p>13 their meetings. I'm not a member. I don't know.</p> <p>14 MS. BRETAN: Okay.</p> <p>15 (Exhibit 14 was marked for</p> <p>16 identification by the court reporter.)</p> <p>17 BY MS. BRETAN:</p> <p>18 Q Exhibit 14 is a November 8th, 2011, email</p> <p>19 from Nikole Davenport to you --</p> <p>20 A Okay.</p> <p>21 Q -- do you see that?</p> <p>22 A Uh-huh.</p> <p>23 Q This was produced in this action. Who is</p> <p>24 Nikole Davenport?</p> <p>25 A She's an attorney at Chitwood Harley.</p>
<p style="text-align: right;">126</p> <p>1 search his financial reports. They don't file at</p> <p>2 the Secretary of State's office. If you want to go</p> <p>3 read them, go read them.</p> <p>4 Q But you're here as a fiduciary for PERS,</p> <p>5 correct?</p> <p>6 A Yeah, but that has nothing to do with it.</p> <p>7 So why would I go look at his campaign contribution</p> <p>8 reports? It has nothing to do with anything.</p> <p>9 You're wasting my time. You're wasting your time.</p> <p>10 I don't understand why you can't get that through</p> <p>11 your head. You have some notion, apparently,</p> <p>12 that -- it's not worked before, Jennifer. Why is it</p> <p>13 you want to waste my time like this?</p> <p>14 Q Are you familiar with a political action</p> <p>15 group or 527 known as the Democratic Attorney</p> <p>16 General's Association?</p> <p>17 A I've heard of DAGA. That's what I</p> <p>18 understand it's called. I don't know if that's what</p> <p>19 it stands for. I don't know.</p> <p>20 Q And what is it?</p> <p>21 A I think it's an Association of Attorney</p> <p>22 Generals. They're all Democrats.</p> <p>23 Q Are you a member of DAGA?</p> <p>24 A No, I'm not a member of DAGA. I'm not an</p> <p>25 Attorney General.</p>	<p style="text-align: right;">128</p> <p>1 Q And it looks like she's forwarding on to</p> <p>2 you an election update she received from DAGA; is</p> <p>3 that correct?</p> <p>4 A It appears to be, yes.</p> <p>5 Q And that update notes that Attorney</p> <p>6 General Hood has won reelection?</p> <p>7 A Right.</p> <p>8 Q And she's offering congratulations to</p> <p>9 you --</p> <p>10 A Yeah.</p> <p>11 Q -- is that right?</p> <p>12 And this had to do with the most recent</p> <p>13 election in November 2011; isn't that right?</p> <p>14 A That's right.</p> <p>15 Q Do you know if Ms. Davenport is a member</p> <p>16 of DAGA?</p> <p>17 A As far as I know, she's not an elected</p> <p>18 Attorney General; so I don't see how she could be a</p> <p>19 member of DAGA.</p> <p>20 Q She's forwarding on an email that looks</p> <p>21 like it's to DAGA members, right?</p> <p>22 A It beats the hell out of me. I'm not a</p> <p>23 member. I don't know what the deal is. You keep</p> <p>24 asking. How many times do I have to tell you? I</p> <p>25 don't know how it operates.</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">129</p> <p>1 Q Okay.</p> <p>2 A She sent me something saying</p> <p>3 "Congratulations." She forwarded on something.</p> <p>4 Okay. Great. Thank you.</p> <p>5 Q Why would she congratulate you on the</p> <p>6 reelection of Mr. Hood?</p> <p>7 A Because I work for the Attorney General at</p> <p>8 will and pleasure like all the other lawyers, and I</p> <p>9 guess she was letting me know that</p> <p>10 "Congratulations." Hopefully it meant I had another</p> <p>11 job -- a job for another four years.</p> <p>12 Q Your job is dependent on Attorney General</p> <p>13 Hood appointing you?</p> <p>14 A That's what "at will" means. If you're</p> <p>15 not sure what "at will" means, then you may have to</p> <p>16 go to the employment lawyer at your law firm and ask</p> <p>17 him. "At will," whenever he decides he wants to</p> <p>18 fire me, he can fire me.</p> <p>19 MS. BRETAN: Okay.</p> <p>20 (Exhibit 15 was marked for</p> <p>21 identification by the court reporter.)</p> <p>22 BY MS. BRETAN:</p> <p>23 Q Exhibit 15, I'll represent to you, is a</p> <p>24 printout of top contributors to DAGA from 2004 to</p> <p>25 2012.</p>	<p style="text-align: right;">131</p> <p>1 and we've done work with Joey Langston. David Nutt</p> <p>2 & Associates we've done work with in the past, and</p> <p>3 we're doing -- well, actually, I'm not -- I'm not</p> <p>4 sure that Dave -- Dave Nutt may have been involved</p> <p>5 in the tobacco litigation, but that was Attorney</p> <p>6 General Mike Moore, not us. And I think -- I'm not</p> <p>7 positive about Shane or Joey, but one of them, I</p> <p>8 think, or maybe both were involved in the tobacco</p> <p>9 litigation with General Moore.</p> <p>10 Q And they donated 50,000 to DAGA, it looks</p> <p>11 like?</p> <p>12 A Well, that's what it says. I don't have a</p> <p>13 clue whether this is accurate or not. This is just</p> <p>14 what this document says. There's GlaxoSmithKline,</p> <p>15 20,000. We've sued them. Got a lawsuit against</p> <p>16 them now. Let's see. KPMG, we've sued them before.</p> <p>17 Q I'm not asking who you sued.</p> <p>18 A Well, I think it's relevant. If you want</p> <p>19 to know who's contributed, I think it's important to</p> <p>20 know that sometimes just because they're on this</p> <p>21 list or having contributed to DAGA doesn't mean --</p> <p>22 we sued Microsoft. We got over 50 million --</p> <p>23 \$60 million from Microsoft, suing them for the state</p> <p>24 of Mississippi. MCI, Inc., we got over 100 --</p> <p>25 what -- \$110 million for MCI for cheating us on</p>
<p style="text-align: right;">130</p> <p>1 A Okay.</p> <p>2 Q On the first page there can you look at</p> <p>3 those top contributor -- top 18 contributors and</p> <p>4 tell me if you recognize any of the names on the</p> <p>5 list?</p> <p>6 A The Langston Law Firm. There's Joey</p> <p>7 Langston's Law Firm and there's Shane Langston.</p> <p>8 They're brothers, but they have different law firms.</p> <p>9 I'm not sure which one that is. Beverly</p> <p>10 Enterprises, I think, is a nursing home chain.</p> <p>11 AT&T, I think you know who that is. MCI --</p> <p>12 Q I'm not asking you. I'm sorry. I don't</p> <p>13 mean to interrupt you.</p> <p>14 A You're asking me if I know who these were,</p> <p>15 and I'm just going through and telling you. Did you</p> <p>16 not want me to do that?</p> <p>17 Q Let me rephrase the question.</p> <p>18 A Okay.</p> <p>19 Q Could you look through the list and let me</p> <p>20 know if you recognize any of the names on the list</p> <p>21 as lawyers with whom the State of Mississippi</p> <p>22 Attorney General's office does contingency fee work?</p> <p>23 A Now or ever?</p> <p>24 Q Ever.</p> <p>25 A Well, we've done work with Shane Langston,</p>	<p style="text-align: right;">132</p> <p>1 taxes. Let's see. See what I'm saying?</p> <p>2 I mean, you're trying to take this stuff</p> <p>3 out of context. You don't want to know about RAGA,</p> <p>4 but you want to know about DAGA. You may want to</p> <p>5 know who contributed to the Democratic Attorney</p> <p>6 General's office according to OpenSecrets and</p> <p>7 whether we did any work with them, but you don't</p> <p>8 want to know whether we've sued any of them or not.</p> <p>9 Q I'm just asking about --</p> <p>10 A Well --</p> <p>11 Q -- if any of these entities have</p> <p>12 contingency fee contracts.</p> <p>13 A Well, right now none of -- well, none of</p> <p>14 them have -- none of these people have a current</p> <p>15 contingent contract, I don't believe.</p> <p>16 Q With the State of Mississippi. What about</p> <p>17 in the past? I'm asking you to identify --</p> <p>18 MR. HARNES: Asked and answered.</p> <p>19 BY MS. BRETAN:</p> <p>20 Q -- the --</p> <p>21 A I've already answered that for you.</p> <p>22 Q Okay. The Langston law firm and David</p> <p>23 Nutt & Associates?</p> <p>24 A I'm not sure Dave Nutt -- David Nutt &</p> <p>25 Associates. Dave Nutt was affiliated, involved with</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">133</p> <p>1 the tobacco litigation. I wasn't handling tobacco 2 litigation. I worked for Mike Moore when he was 3 Attorney General, but I wasn't involved in the 4 tobacco cases. So I think one or both of the 5 Langston brothers were involved, and I think David 6 Nutt was involved. 7 Q Okay. Turning the page -- and I'm going 8 to make this a narrower question for you. Are any 9 of the contributors for the 2006 cycle to DAGA firms 10 with whom the State of Mississippi has a monitoring 11 agreement for securities litigation? 12 A In this particular case, Nix Patterson & 13 Roach. 14 Q And they donated \$50,000, it looks like? 15 MR. HARNES: Object to the form of the 16 question. 17 THE WITNESS: Again, I don't know who -- 18 what OpenSecrets is, but we haven't -- as far as I 19 know, we haven't done a case with Nix Patterson & 20 Roach, just to make sure for the record you 21 understand that just because they're on this list -- 22 and I think one of them -- one of these guys in this 23 law firm may have been a state Attorney General at 24 one time. I don't know. I don't know those people. 25 I know the name.</p>	<p style="text-align: right;">135</p> <p>1 eight, Nix Patterson & Roach. 2 (Exhibit 16 was marked for 3 identification by the court reporter.) 4 BY MS. BRETAN: 5 Q Mr. Neville, I'd like you to look at 6 Exhibit 16. I'll represent to you that Exhibit 16 7 is a printout of donors -- a full printout of donors 8 to DAGA from 2010 and 2012. I went ahead and I 9 flagged the pages that I want to talk about for you. 10 So it looks like the first highlighted entry 11 there -- can you tell me what that entry shows? 12 A The one in kind of a yellow orange? 13 Q Yeah. 14 A \$25,000, Lieff Cabraser, 15 January 8th, 2010. 16 Q Okay. And turning the page -- 17 A Grant & Eisenhower for 18 \$10,000, October 22nd, 2010. Then Stuart Grant, two 19 entries, 8,500 and \$6,500, both on October 27th, 20 2010. Then G&E again, \$25,000 on October 23rd, 21 2009. 25,000, Chitwood Harley, August the 5th, 22 2009. 23 Q And continuing on to the next tab ... 24 A \$25,000, Grant & Eisenhower for May 11th, 25 2009, and \$25,000 Grant & Eisenhower for May 17th,</p>
<p style="text-align: right;">134</p> <p>1 BY MS. BRETAN: 2 Q Anyone else on that list? 3 A That's all. 4 Q Okay. Turning to the next page, 2008 5 cycle. 6 A Okay. Barroway Topaz which -- they're not 7 Barroway Topaz anymore. They're something else. 8 Q Okay. 9 A Bernstein Litowitz, yes. Labaton, yes. 10 Berstein Liebhard are on the list. They did one 11 case for us, Cigna. They haven't done a case 12 lately. Baron & Budd, yes, they did Semtech, but 13 that's over. Let's see. 14 Q Next page. 2010 cycle. Which firms 15 have -- any of these have monitoring agreements for 16 securities litigation with the State of Mississippi? 17 A Bernstein -- number two, Bernstein 18 Litowitz; number three, Labaton; number nine, Grant 19 & Eisenhower firm. 20 Q Grant & Eisenhower was proposed as co-lead 21 counsel in this action? 22 A I think we talked about that about a dozen 23 times. Fifteen, Kaplan Fox. Let's see. 24 Q And 2012 cycle? 25 A Number seven, Bernstein Litowitz; number</p>	<p style="text-align: right;">136</p> <p>1 2010. Just keep rolling? 2 Q Keep rolling. 3 A Lieff Cabraser, \$10,000, August the 1st, 4 2011. \$30,000, Chitwood Harley, February 25th, 5 2011. \$25,000, Grant & Eisenhower for 6 December 20th, 2011. \$10,000, Lieff Cabraser, July 7 the 10th, 2012. 8 Q That should be it. So those are all 9 donations by counsel proposed as lead counsel in 10 this action to this association, the Democratic 11 Attorney General's Association? 12 A That's what this purports to be. 13 Q Were you aware of the contributions? 14 MR. HARNES: Let me get my objection in. 15 Let him finish his answer. Object to the lack of 16 foundation to that question. Go ahead. 17 THE WITNESS: No, I wasn't aware of it. 18 BY MS. BRETAN: 19 Q Were you not aware of -- sorry. What were 20 you aware of? 21 A I'm aware that a lot of money has to be 22 raised to counter organizations that are bogus like 23 the Law Enforcement Alliance of America, which is a 24 bogus front group for -- I don't know because they 25 hide the money, but it must be the the National</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">137</p> <p>1 Chamber of Commerce, tobacco industry, whatever. 2 They spend millions of dollars across the country. 3 They claim to be a group of sheriffs, police 4 officers and whatnot, no members whatsoever in 5 Mississippi, and they spent \$700,000 opposing my 6 boss's election when he ran the first time in 2003. 7 But there are no members in Mississippi, and as 8 we -- everybody knows, there's no way in the world a 9 bunch of cops have the money to raise. So where 10 does the money come from? We don't know because it 11 was secreted in. 12 They did the same thing to a Supreme 13 Court candidate. They spent over \$1 million 14 opposing one of our Supreme Court candidates, 15 defeated him. There's a TV special about it called 16 "Hot Coffee." You ought to watch it. It's very 17 informative. 18 They also just recently spent -- -- I 19 don't know -- something like \$300,000 in Mississippi 20 on the Supreme Court race and elected a fine fellow, 21 has virtually no experience, about like yourself, 22 getting elected to the state Supreme Court, early 23 30s. 24 Q Thank you. 25 A Just, you know, early 30s, hadn't done</p>	<p style="text-align: right;">139</p> <p>1 he has to be able to raise money to be able to win. 2 And people in Mississippi seemed to be pretty 3 pleased with him no matter how you want to take 4 shots at him because although all this crap comes 5 down on him, he won reelection with 63 percent of 6 the vote or 62 percent of the vote or whatever it 7 was in the end. 8 Q Okay. I'm just going to ask you to focus 9 on my question. 10 A Well, your questions -- 11 Q I understand you have -- I understand, 12 and, as I said at the outset, if there -- if you 13 have strong feelings about my questions, there will 14 be an opportunity for you to -- your counsel to ask 15 you about those. 16 A No, I'm going to answer the questions the 17 way I want them. You're not going to cut me off. 18 You're not going to tell me what I can say and not 19 say, period. And you ought to know that by now 20 having reviewed other depositions I've given. This 21 is all bull crap. You know it. I know it. It's a 22 waste of time. The court analyzed whatever it 23 wanted to analyze to be able to determine who they 24 thought would be the best lead plaintiff and many 25 other cases on the same --</p>
<p style="text-align: right;">138</p> <p>1 much of anything. Other guy, very experienced. And 2 guess what? We -- everybody understands it's the 3 National Chamber of Commerce secreting money in. So 4 unfortunately because of that -- and I don't agree 5 with the Supreme Court of the United States's 6 ruling. Any and everything goes around these days, 7 it seems like, and so people have to raise a lot of 8 money to counter secret negative campaigns. 9 Apparently both sides do it. We happen to not do it 10 in Mississippi on the Democratic side, but they sure 11 do it on the Republican side. 12 Q Okay. 13 A So the level of giving that people do, I 14 think it's really sad, but the reality is if Pfizer 15 -- I'm not saying they did it, but if Pfizer can 16 write \$1 million check to the Law Enforcemnt 17 Alliance of America or RJ Reynolds, nobody knows it, 18 they can get away with it, and they want to try to 19 defeat people who want to hold them accountable when 20 they commit fraud or do terrible things to people 21 like pedalling cigarettes that are dangerous or kill 22 people, there's not a whole lot we can do about it 23 because the law of the land allows for it. 24 So there are people who believe in trying 25 to stand up for the little guy, like Jim Hood. So</p>	<p style="text-align: right;">140</p> <p>1 MR. HARNES: I'm going to -- 2 THE WITNESS: I'm just saying in general 3 what happened. They've approved us. And so all of 4 this is a waste of time. I know you love it because 5 you get paid by the hour. So as many hours as you 6 can do, churn, is kachink, kachink, kachink for you 7 and your law firm. I understand that. But it 8 doesn't mean I have to like it, and it doesn't mean 9 that I have to take your pointed questions, poor 10 foundation, insinuations and just not do anything, 11 and so I'm going to tell you how I feel about it. 12 Just like the legislation that was passed, House 13 Bill 211. Do you know the Attorney General went 14 over to the legislature and asked to speak to the 15 judiciary committee in the house about legislation 16 about his own office? And do you know how much 17 opportunity they gave him to speak? Zero. Nothing. 18 Would not let him in the room to speak, but if it 19 was about the Department of Environmental Quality, 20 if it was about the Department of Health, the 21 Treasurer's office, they would be given that 22 opportunity. So why do I have some hostility about 23 all of it personally? Because it was totally 24 disrespectful to him. It was wrong, but I can't do 25 anything about it.</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">141</p> <p>1 MS. BRETAN: Did we mark Exhibit 18?</p> <p>2 MS. BAFUS: Exhibit 17.</p> <p>3 MR. HARNES: Are we at an appropriate</p> <p>4 time? I need to take a restroom break.</p> <p>5 MS. BRETAN: Sure.</p> <p>6 THE VIDEOGRAPHER: Okay. Just give me one</p> <p>7 moment. Be sure to put your mics on the table.</p> <p>8 Going off the record, the time is 12:01 p.m. We're</p> <p>9 off the record.</p> <p>10 (Recess.)</p> <p>11 (Exhibit 17 was marked for</p> <p>12 identification by the court reporter.)</p> <p>13 THE VIDEOGRAPHER: Okay. We're back on</p> <p>14 the record, and the time is -- excuse me --</p> <p>15 12:07 p.m.</p> <p>16 BY MS. BRETAN:</p> <p>17 Q Before the break, Mr. Neville, we were</p> <p>18 discussing Exhibit 16, which is the list of donors</p> <p>19 to the DAGA, or the Democratic Attorneys General --</p> <p>20 Attorneys General Association, and we went through</p> <p>21 donations by proposed -- the originally proposed</p> <p>22 counsel in this action to that association, correct?</p> <p>23 A That was the question.</p> <p>24 Q And were you aware of the level of</p> <p>25 donations -- the extent of the donations by counsel</p>	<p style="text-align: right;">143</p> <p>1 A It says Jim Hood for Attorney General,</p> <p>2 300,000.</p> <p>3 Q So DAGA gave Jim Hood for Attorney General</p> <p>4 \$300,000?</p> <p>5 A I --</p> <p>6 MR. HARNES: I'm objecting to the form of</p> <p>7 the question, and I don't know that this -- it may</p> <p>8 be it may not be, but I'm objecting as to whether</p> <p>9 this provides a foundation for that.</p> <p>10 THE WITNESS: I don't know the answer.</p> <p>11 BY MS. BRETAN:</p> <p>12 Q And turning to the next page for 2008, Jim</p> <p>13 Hood for Attorney General is listed as the top</p> <p>14 vendor for \$850,000; is that right?</p> <p>15 A That's what this says, uh-huh.</p> <p>16 Q Okay. And turning to the next page for</p> <p>17 2012, still at top five, Campaign to Reelect Jim</p> <p>18 Hood \$125,000?</p> <p>19 A That's what it says.</p> <p>20 Q Let's turn to -- Mr. Neville, are you</p> <p>21 familiar with the fact that candidates for office</p> <p>22 are required to file a report -- reports of campaign</p> <p>23 contributions?</p> <p>24 A Yes, well, they do in Mississippi. I</p> <p>25 don't know about other states.</p>
<p style="text-align: right;">142</p> <p>1 -- opposing counsel in this action to DAGA?</p> <p>2 A As I've already testified, I was not.</p> <p>3 Q During the break did you talk to anybody</p> <p>4 about the substance of your testimony today?</p> <p>5 A No.</p> <p>6 MS. BRETAN: I'd like to go ahead and</p> <p>7 mark -- sorry.</p> <p>8 Q Do you know what DAGA does with the money</p> <p>9 it receives from its owners?</p> <p>10 A No.</p> <p>11 MS. BRETAN: Can you mark as Exhibit --</p> <p>12 did we mark as Exhibit 17? It should be right</p> <p>13 there.</p> <p>14 Q Mr. Neville?</p> <p>15 A What?</p> <p>16 Q Can you grab Exhibit 17 there?</p> <p>17 A Thanks.</p> <p>18 Q I'll represent to you that Exhibit 17 is a</p> <p>19 list of expenditures by the Democratic Attorneys</p> <p>20 General Association for 2004, 2008 and 2012. In</p> <p>21 looking at the first page with respect to 2004, it</p> <p>22 lists the top five vendors' expenditures; do you see</p> <p>23 that?</p> <p>24 A I do.</p> <p>25 Q And can you tell me what the first one is?</p>	<p style="text-align: right;">144</p> <p>1 Q And have you ever gone and looked at the</p> <p>2 campaign contributions to Attorney General Hood?</p> <p>3 A No. I think I testified earlier that I</p> <p>4 did not.</p> <p>5 MS. BRETAN: Okay. So I just wanted to</p> <p>6 confirm that. So Exhibit 18.</p> <p>7 (Exhibit 18 was marked for</p> <p>8 identification by the court reporter.)</p> <p>9 BY MS. BRETAN:</p> <p>10 Q Exhibit 18 is a periodic report of</p> <p>11 election campaign receipts and disbursements filed</p> <p>12 by Mr. Hood for the period October 28th, 2007,</p> <p>13 through December 31st, 2007; do you see that?</p> <p>14 A I do.</p> <p>15 Q And is that Mr. Hood's signature there?</p> <p>16 A It looks like it.</p> <p>17 Q Okay. And turning the page, can you tell</p> <p>18 me -- it looks like -- well, let me just go ahead.</p> <p>19 It looks like Lieff Cabraser -- the Lieff Cabraser</p> <p>20 firm donated approximately \$30,000 there. Is that</p> <p>21 what it lists, the highlighted entry?</p> <p>22 A Yes.</p> <p>23 Q Were you aware that Lieff Cabraser had</p> <p>24 donated \$30,000 to Attorney General Hood in 2007?</p> <p>25 A No. I can just give you a general answer:</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">145</p> <p>1 I don't know any of the contributions, don't know 2 when, don't know how much or from whom. That will 3 just answer all of the questions you might have that 4 pertains to this issue. 5 Q Okay. Were you aware -- I think you also 6 testified that you are aware that issues had been 7 raised about political campaign contributions and 8 contingency fee contracts; is that right? 9 A I read the newspaper, yes. Uh-huh. 10 Q So you are aware that issues had been 11 raised with respect to Attorney General Hood? 12 A Certainly there were campaign commercials 13 that were run against him, but it -- he's the only 14 democratic elected state official in Mississippi. 15 He -- his percentage of reelection in 2011 is higher 16 or higher than anybody. So, yeah, it was out there, 17 but the public understands he does a good job. 18 Q Were you curious about the level of 19 campaign contributions by the firms that Attorney 20 General Hood was selecting for securities litigation 21 cases? 22 A That has nothing to do with what Geoffrey 23 Morgan and I do when it comes to recommendation of 24 firms that we do cases with, and so Geoffrey and I 25 don't pay any attention to that piece of it.</p>	<p style="text-align: right;">147</p> <p>1 candidate -- obviously he's an incumbent running for 2 reelection, but it has nothing to do with the office 3 itself. So it appears to be what you say it is. I 4 haven't printed off, examined these things from the 5 Secretary of State's office. So whether you have 6 fabricated something or not, I haven't a clue, but I 7 presume you haven't, but I don't know. 8 Q Okay. And turning to the first tab in 9 there, in the list of receipts, it shows a donation 10 by J. Eisenhofer of Grant & Eisenhofer for \$4500; is 11 that correct? 12 A That's what it said. 13 Q Okay. Turning to the next tab, it looks 14 like there's a donation of 5/23/2011 by Stuart Grant 15 of Grant & Eisenhofer for \$4500? 16 A That's what it says right here. 17 Q And continuing down, William Titleman of 18 Grant & Eisenhofer for \$5,000? 19 A That's what it says. 20 Q Okay. Turning to the next tab, that's a 21 report covering the period July 24th through 22 September 30th, 2011 -- 23 A Okay. 24 Q -- covering the period July 24th, 2011. 25 A Okay.</p>
<p style="text-align: right;">146</p> <p>1 Q And the firms that recommend cases to the 2 AG's office on behalf of Mississippi PERS, those are 3 firms that have monitoring agreements typically? 4 MR. HARNES: I'm going to object to the 5 form of the question as to a lack of foundation. 6 THE WITNESS: We -- we have a list. We've 7 gone over that. They're the ones that typically 8 recommend cases to us on the security side. The 9 Pond Gadow & Tyler firm is the exception to that. 10 (Exhibit 19 was marked for 11 identification by the court reporter.) 12 MS. BRETAN: Exhibit 19 is being marked. 13 Q Exhibit 19, I'll represent to you, is a 14 collection of all of the reports related to -- 15 reports related to campaign contributions to 16 Attorney General Jim Hood's campaign in 2011. I've 17 gone ahead and I've marked the pages I want to ask 18 you about. The first report covers the period 19 May 1st, 2011, to May 31st, 2011; do you see that? 20 A Yes. 21 Q And that's a -- that would be a report 22 submitted by Attorney General Hood; is that your 23 understanding? 24 A It has nothing to do with the office of 25 the Attorney General. It has to do with as a</p>	<p style="text-align: right;">148</p> <p>1 Q And turning to the first tab in there, it 2 looks like two donations by the Chitwood firm on 3 May 10th, 2011, for \$1,000 and on August 25th, 2011, 4 for \$10,000? 5 A That's what it says. 6 Q Were you aware of those donations to the 7 Attorney General? 8 A No. No. No. No. How many times do I 9 have to say no? 10 MR. HARNES: Just answer the question, 11 George. 12 BY MS. BRETAN: 13 Q And continuing down, there's an entry for 14 Craig Harley on August 22nd, 2011, from the Chitwood 15 firm, \$5,000 to the campaign. 16 A Okay. All right. 17 Q And the next tabbed page -- 18 A Okay. 19 Q -- an entry by John Harnes on August 23rd, 20 2011, for \$5,000 for the campaign. 21 A That's what it says. 22 Q Mr. Harnes is your counsel in this case? 23 A I think he's sitting right next to me. 24 Yeah. 25 Q And turning to the next tabbed page, do</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">149</p> <p>1 you see the entry for Martin Chitwood of -- is</p> <p>2 Martin Chitwood associated with the Chitwood law</p> <p>3 firm?</p> <p>4 A My understanding is he is the Chitwood of</p> <p>5 the Chitwood law firm.</p> <p>6 Q And he donated \$5,000 on August</p> <p>7 25th, 2011?</p> <p>8 A That's what it says.</p> <p>9 Q And turning the page, Nikole Davenport on</p> <p>10 9/30/2011, Chitwood Harley & Harnes, \$250. That's</p> <p>11 Ms. Davenport we discussed earlier; is that correct?</p> <p>12 A She's the one that sent me the email;</p> <p>13 that's right.</p> <p>14 Q Okay. Were you aware that she had donated</p> <p>15 to --</p> <p>16 A No.</p> <p>17 Q Continuing on, there's a report covering</p> <p>18 the period October 30th, 2011, to December 31st,</p> <p>19 2011; do you see that?</p> <p>20 A I do.</p> <p>21 Q And the next tabbed page has a donation by</p> <p>22 Elizabeth Cabraser on September 27th, 2011, of</p> <p>23 \$2,000.</p> <p>24 A Okay. I see that.</p> <p>25 Q And turning to the next tabbed page, I</p>	<p style="text-align: right;">151</p> <p>1 to be raised against secret organizations that are</p> <p>2 out there funding things that typically attack my</p> <p>3 boss or attack people I think stand a good chance of</p> <p>4 getting elected. They're qualified. They do good</p> <p>5 jobs, but the reality is they don't fit the agenda</p> <p>6 of whoever is secretly contributing money through</p> <p>7 false, bogus organizations like the Law Enforcement</p> <p>8 Alliance of America. It has nothing to do with</p> <p>9 what -- when Geoffrey and I are evaluating cases and</p> <p>10 go make a recommendation to the General of what we</p> <p>11 recommend or not. So it's really irrelevant.</p> <p>12 I'm glad they've helped. I'm glad a lot</p> <p>13 of people helped. There were lots of people on this</p> <p>14 list. So he got reelected. I think that's a good</p> <p>15 thing.</p> <p>16 BY MS. BRETAN:</p> <p>17 Q We talked earlier about "pay to play" and</p> <p>18 "pay to sue," the term "pay to play" and "pay to</p> <p>19 sue."</p> <p>20 A I've never heard "pay to sue." Okay.</p> <p>21 Q And you, on behalf of PERS, are acting in</p> <p>22 a fiduciary capacity, correct?</p> <p>23 A Yes.</p> <p>24 Q We talked about that. So do you think it</p> <p>25 would be incumbent on you in that -- in that role to</p>
<p style="text-align: right;">150</p> <p>1 just want to ask the question: It shows a donation</p> <p>2 from Magnolia Democratic Attorney General's</p> <p>3 Association; do you know what that is?</p> <p>4 A No, ma'am.</p> <p>5 Q Do you know if that is the same as the</p> <p>6 DAGA we were discussing earlier?</p> <p>7 A I don't have a clue.</p> <p>8 Q Okay. So just to put a fine point on it,</p> <p>9 you weren't aware of those donations we just looked</p> <p>10 at by counsel proposed in this action to the</p> <p>11 Attorney General's --</p> <p>12 A No.</p> <p>13 Q -- campaign?</p> <p>14 Does -- what do you think of it? What do</p> <p>15 you think of that?</p> <p>16 A Nothing. I'm glad they helped to get him</p> <p>17 reelected.</p> <p>18 Q Are you surprised by the amount of the</p> <p>19 donations?</p> <p>20 MR. HARNES: I think that's been asked and</p> <p>21 answered.</p> <p>22 THE WITNESS: I'm -- I am, as a citizen of</p> <p>23 the United States, flabbergasted how much money is</p> <p>24 spent on political campaigns, but I know a lot of</p> <p>25 money has to be raised. I know a lot of money has</p>	<p style="text-align: right;">152</p> <p>1 know whether there had been significant campaign</p> <p>2 contributions by counsel in this -- proposed in this</p> <p>3 action to the Attorney General's campaign?</p> <p>4 A No because Geoffrey and I don't get</p> <p>5 involved in the political side of raising money or</p> <p>6 microscopically analyzing the political report. We</p> <p>7 analyze cases on his behalf and go to him and make</p> <p>8 recommendations.</p> <p>9 Q Does the Attorney General always accept</p> <p>10 your recommendation?</p> <p>11 A Most of the time.</p> <p>12 Q But there are occasions where he doesn't?</p> <p>13 A I don't remember one.</p> <p>14 Q And your recommendations are typically</p> <p>15 firms that have monitoring agreements with the</p> <p>16 Attorney General's office?</p> <p>17 A Right.</p> <p>18 Q And the Attorney General decides who has</p> <p>19 monitoring agreements?</p> <p>20 A With our recommendation.</p> <p>21 Q Okay. Mr. Neville, do you know -- sorry.</p> <p>22 Do you know if PERS -- do you know if PERS</p> <p>23 requires any of its contracting -- contracting</p> <p>24 investment managers to inform PERS about whether</p> <p>25 there had been campaign contributions to state</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">153</p> <p>1 officials?</p> <p>2 A I have no idea. The only person -- the</p> <p>3 governor has an appointee, and the state treasurer,</p> <p>4 by the nature of the job itself -- whoever is the</p> <p>5 sitting treasurer is on the board. I think all of</p> <p>6 the rest of them are elected. There's a retirees'</p> <p>7 association or -- not association, but retiree --</p> <p>8 state employees' retiree representative. There's a</p> <p>9 city's representative. There's a county's</p> <p>10 representative. There's a current working state</p> <p>11 employee's representative. I don't remember all the</p> <p>12 designations because we have elections periodically,</p> <p>13 but I think the only two people that have -- that</p> <p>14 have, you know, elected -- or certainly the</p> <p>15 treasurer is, and the governor's appointee is not</p> <p>16 the governor, but works for someone who is elected.</p> <p>17 Q If PERS had a requirement that its</p> <p>18 contracting parties report any political campaign</p> <p>19 contributions made to state officials or to PACs,</p> <p>20 why do you think that would be?</p> <p>21 A I have no idea.</p> <p>22 MR. HARNES: I want to object to that</p> <p>23 question --</p> <p>24 THE WITNESS: Sorry.</p> <p>25 MR. HARNES: -- on a number of grounds,</p>	<p style="text-align: right;">155</p> <p>1 MS. BRETAN: I'll mark as Exhibit 20 the</p> <p>2 initial disclosures of lead plaintiff.</p> <p>3 (Exhibit 20 was marked for</p> <p>4 identification by the court reporter.)</p> <p>5 BY MS. BRETAN:</p> <p>6 Q Do you recognize this document?</p> <p>7 A Yes, it's the initial disclosures we filed</p> <p>8 in December of '12.</p> <p>9 Q Is this a document you would have</p> <p>10 reviewed?</p> <p>11 A Yes. I didn't help prepare it, but I</p> <p>12 would have seen it before it was filed.</p> <p>13 Q Did anyone come and talk to you about --</p> <p>14 sorry.</p> <p>15 Turning to part A under section one --</p> <p>16 A What page?</p> <p>17 Q That's on page 3.</p> <p>18 A All right.</p> <p>19 Q Under section A it says that "Lead</p> <p>20 Plaintiff is believed to have information concerning</p> <p>21 its transactions in Diamond stock common stock</p> <p>22 during the class period"; do you see that?</p> <p>23 A What line are we talking about?</p> <p>24 Q Line 12 and 13. Lines 12 and 13.</p> <p>25 A Okay.</p>
<p style="text-align: right;">154</p> <p>1 but it's been answered.</p> <p>2 MS. BRETAN: I'll come back to it.</p> <p>3 Q Mr. Neville, do you know what the class</p> <p>4 period is in this case?</p> <p>5 A You've already asked me that. I told you</p> <p>6 I wasn't -- wasn't sure.</p> <p>7 Q Sitting here today, you're not sure what</p> <p>8 the class period is in this case?</p> <p>9 A I just don't remember the exact dates, no.</p> <p>10 Q Do you know if it's different than the</p> <p>11 period we talked about, December -- sorry.</p> <p>12 MS. BALFUS: December 9th, 2010.</p> <p>13 BY MS. BRETAN:</p> <p>14 Q December 9th, 2010, to November 4th, 2011?</p> <p>15 A I just don't remember. I'm sorry. I</p> <p>16 mean, I don't remember names very well and I -- I</p> <p>17 don't remember the specific dates. I know that my</p> <p>18 experience has been in our securities cases the</p> <p>19 class period is rarely the same as the original</p> <p>20 complaint's class period.</p> <p>21 Q Do you know what the claims are in this</p> <p>22 case?</p> <p>23 A The claim is that Diamond Foods</p> <p>24 manipulated the financials in order -- in our -- my</p> <p>25 opinion, to bolster the value of the stock.</p>	<p style="text-align: right;">156</p> <p>1 Q But doesn't it just list Mississippi PERS,</p> <p>2 care of the law firm; is that correct?</p> <p>3 A That's what it says, uh-huh.</p> <p>4 Q And was that a complete response to the</p> <p>5 information that should have been provided in</p> <p>6 section 1A?</p> <p>7 A That's a question --</p> <p>8 MR. HARNES: You know, I'm going to -- I'm</p> <p>9 going to object to that. You know, this is --</p> <p>10 you're asking this witness as to whether this</p> <p>11 complies with Rule 26. You know, I don't see any</p> <p>12 legitimate purpose for this, and I'm just stating</p> <p>13 that for the record, and I will let the witness go</p> <p>14 ahead, but, you know, I -- I'll just say that.</p> <p>15 THE WITNESS: We rely on the counsel to</p> <p>16 prepare these documents, and if you have a problem</p> <p>17 with it, you need to take it up with the judge. I</p> <p>18 mean, I don't know that it complies with what is</p> <p>19 necessarily -- what is required under the rules. I</p> <p>20 just -- I don't.</p> <p>21 BY MS. BRETAN:</p> <p>22 Q But you're the individual in charge of</p> <p>23 monitoring this action, correct?</p> <p>24 A I understand.</p> <p>25 MS. BRETAN: Okay. Let's turn to</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">157</p> <p>1 Exhibit 21. 2 (Exhibit 21 was marked for 3 identification by the court reporter.) 4 BY MS. BRETAN: 5 Q Exhibit 21 are the plaintiff's amended 6 initial disclosures. 7 A Okay. 8 Q Are you familiar with this document? 9 A I don't remember it being discussed, but I 10 would have gotten a copy of it. 11 Q And if you turn to section 1A now -- 12 A Okay. 13 Q -- it lists additional people and entities 14 with -- people with respect to information regarding 15 knowledge of the complaint, the substance of the 16 claims in the lawsuit and the transactions in 17 Diamond's publicly traded securities during the 18 class period; is that right? 19 A It has more information in it -- it has 20 more information in it than what is set out in 21 Exhibit 20 on page 3, line 11 through 18. 22 Q And it lists you as one of the individuals 23 with information -- 24 A That's correct. 25 Q -- correct?</p>	<p style="text-align: right;">159</p> <p>1 decision to buy -- within those parameters, the 2 investment manager is making the decision to buy or 3 sell Diamond, for example? 4 A That's my understanding, yes. 5 Q Looking at the amended disclosures here, 6 can you tell me if the investment manager who bought 7 or sold Diamond shares is listed as -- with respect 8 to knowledge of the complaint, the substance of the 9 claims or transactions in Diamond's publicly traded 10 securities during the class period? 11 A The investment advisor is not -- no 12 investment advisor is listed here. 13 Q Do you know who the investment manager 14 with respect to the trades in Diamond securities 15 was? 16 A No. I wasn't designated for that, anyway. 17 Q But you don't know? 18 A I don't know, and I wasn't the person 19 designated to testify about that. 20 Q Okay. Should the investment manager which 21 made the transactions in Diamond securities have 22 been listed there? 23 MR. HARNES: I'm going to object to that 24 question. 25 THE WITNESS: I'm not sure if they should,</p>
<p style="text-align: right;">158</p> <p>1 A That's right. 2 Q And it lists someone named Pat Robertson, 3 who is the executive director -- listed as executive 4 director of MPERS; is that right? 5 A It does. 6 Q And Lorrie Tingle, chief investment 7 officer of MPERS? 8 A That's right. 9 Q And that's -- do you know what the purpose 10 of initial disclosures are? 11 A Under the federal rules there is initial 12 disclosures that have to be provided, but the 13 substance of them and the technical rules of it and 14 how it's applied in each circuit and each district 15 court, no. 16 Q These were -- these amended disclosures 17 were served on February 18th, 2013, it looks like. 18 A Okay. 19 Q I think -- I believe you testified earlier 20 that Mississippi PERS gives complete discretion to 21 its investment managers with respect to the 22 investment decisions -- the decisions to buy or sell 23 certain equities; is that right? 24 A Within parameters, yes. 25 Q But the investment manager is making the</p>	<p style="text-align: right;">160</p> <p>1 but it sounds like a gripe you've got -- you need to 2 take up with the judge and not with me. I don't 3 know the answer to that. He certainly is not going 4 to be someone who's involved in the litigation, but 5 whether it fits under what you believe he should 6 have been disclosed or not, go to the court, please. 7 MS. BRETAN: Exhibit -- 8 MS. BALFUS: 22. 9 MS. BRETAN: -- 22. 10 (Exhibit 22 was marked for 11 identification by the court reporter.) 12 BY MS. BRETAN: 13 Q Mr. Neville, do you recognize this 14 document? 15 A Uh-huh. 16 Q And what is it? 17 A It's our responses and objections to your 18 first production of documents request. 19 Q Did you review the responses to Diamond's 20 first request for documents before they were served? 21 A Yes. Before they were served? No. I 22 didn't review Diamond's request for production of 23 documents before they were served. No, I did not. 24 Q I'm asking whether you reviewed this 25 document.</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">161</p> <p>1 A That's not what you asked me. You asked 2 me if I reviewed Diamond's first production of 3 documents before they were served -- 4 Q Okay. Let me rephrase. 5 A -- and I don't think I could do that -- 6 Q Okay. 7 A -- unless I've got some sort of ability to 8 read into your mind -- 9 Q You're not a mind reader? 10 A -- or spy into your office. 11 Q So let me rephrase. Thank you. 12 A Okay. 13 Q Did you review Lead Plaintiff Mississippi 14 PERS' responses and objections to Diamond's first 15 request for production of documents before it was 16 served? 17 A Yes. 18 Q And did you believe that all the 19 information in here was accurate? 20 A To the best of my knowledge. Obviously 21 this was -- the bulk of the work was -- most all of 22 the work is done by the counsel, and that's their 23 responsibility as part of the retention agreement. 24 Q What did you do to respond to the document 25 requests?</p>	<p style="text-align: right;">163</p> <p>1 A Or pleadings. I mean, there's stuff that 2 you have. We don't -- it's not like we have 3 anything of -- that -- we don't have any -- any 4 documents that would be of any value in a lawsuit. 5 Q Do you keep records of prior -- of the 6 currently pending lawsuits -- securities lawsuits by 7 the Attorney General on behalf of PERS? 8 A We have some of the records. I mean, we 9 don't have -- we don't -- most stuff is emailed in, 10 and I will review it. I may or may not print it off 11 on cases. 12 Q Do you retain those records, though? 13 A Typically, yes. 14 Q And did you search those records for 15 responsive documents? 16 A Well, I certainly didn't search the 17 records of cases that had nothing to do with Diamond 18 Foods. You just asked if I had retained documents 19 in securities cases. So we didn't go through the 20 entire file cabinet. 21 Q You didn't? 22 A No. If -- there's probably 20 or more 23 securities cases -- cases that are on file. You 24 know, we may have pieces or parts of files and -- 25 that have nothing to do with Diamond.</p>
<p style="text-align: right;">162</p> <p>1 A I searched and made sure there was 2 anything that we may have had there at the AG's 3 offices that would be discoverable. 4 Q Did you search your email? 5 A Yes. I didn't -- I mean, we had our tech 6 people do that. 7 Q And what about hard-copy files? 8 A I think Martin did it, Martin Millett. 9 Q Searched your hard-copy files? 10 A That's my understanding. 11 Q And where did you search? 12 A In the file cabinet. 13 Q Just at the AG's office? 14 A We don't have file cabinets other places. 15 Q And did you find documents that were 16 responsive to these requests? 17 A Not to my memory. 18 Q Not to your memory? 19 A Uh-huh. 20 Q There were no documents, to your memory, 21 responsive to these requests? 22 A We don't -- all we have is attorney-client 23 privileged information. 24 Q So there were privileged documents that 25 were responsive to the request?</p>	<p style="text-align: right;">164</p> <p>1 Q Turning to page 11, "Request for 2 Production," 13, that sought "All documents and 3 communications regarding, relating to, or referring 4 to any and all social and/or business dealings you 5 have had with any of your attorneys of record in 6 this action"; do you see that? 7 A Uh-huh. 8 Q And what did you do to respond to that 9 request? 10 A I think we had the email searched. We 11 looked through the Diamond file. 12 MR. HARNES: Which request was that again? 13 13? 14 BY MS. BRETAN: 15 Q That's all? 16 A Uh-huh. Yes. 17 Q To your knowledge -- to your knowledge are 18 there social or business dealings with your 19 attorneys by the Attorney General's office with the 20 attorneys of record in this action? 21 A I was in Atlanta about a year ago and I 22 went and had a drink with Nikole Davenport. Is that 23 -- I mean, do you want to know about that? I mean, 24 I don't -- I don't understand what the -- maybe 25 that's why we objected to it.</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">165</p> <p>1 Q Do you think that -- sorry. Let me just 2 leave it at that. 3 Turning to page 9, "Request for 4 Production," number 11, it asks for "Documents and 5 communications relating to or referring to any 6 lawsuit, civil action, criminal action, arbitration 7 or administrative or regulatory proceeding during 8 the last -- past ten years to which you were a party 9 or a class member and which involved or related to 10 mismanagement, fraud, breach of fiduciary duty," and 11 so on; do you see that? 12 A I do. 13 Q And do you know what was done to respond 14 to that request? 15 A Yeah, we objected to it. Do you 16 understand what a state Attorney General's office 17 does? I mean, seriously, do you even have a clue? 18 Q I do. 19 A Okay. Well, I mean, we're not going to go 20 pull files about taking an action representing the 21 Board of Nursing about a nurse who is misusing 22 prescriptions at a nursing home. That's what you 23 asked. 24 Q What about -- 25 A That's what you asked for, right there.</p>	<p style="text-align: right;">167</p> <p>1 MS. BRETAN: Okay. Let's go to 2 Exhibit 23. 3 (Exhibit 23 was marked for 4 identification by the court reporter.). 5 BY MS. BRETAN: 6 Q Exhibit 23 are the responses and 7 objections by Lead Plaintiff Mississippi PERS to 8 Diamond Foods' first set of interrogatories; is that 9 right? 10 A That's right. 11 Q And you recognize this document? 12 A Yes. 13 Q You're familiar with its contents? 14 A Pretty much. I mean, I don't remember 15 word for word, but -- yeah, because I signed it. 16 Q And the last page -- turn to the last 17 page. That's a verification by you; is that right? 18 A That's right, uh-huh. 19 Q And why did you verify this document? 20 A Why? Because the rules require it. 21 Q And you verified the documents before 22 signing the verification? 23 A I did. 24 Q So to your understanding all the 25 information in the interrogatory responses would be</p>
<p style="text-align: right;">166</p> <p>1 Q What about other securities litigations 2 that the AG has brought on behalf of Mississippi 3 PERS? 4 A They're in Pacer. I'm not going to do 5 your work for you. 6 Q So they're publicly available? 7 A The Pacer documents are. You think I'm 8 going to go pull all that stuff off Pacer for you? 9 Q But my understanding is that you just told 10 me that you receive copies of documents filed in 11 those litigations; is that correct? 12 A Sometimes. Mostly by email, but they're 13 -- they're the documents that are on file or they're 14 drafts. I'm not going to provide you my -- a draft 15 of a complaint that we worked up. You know that. 16 That's not discoverable. 17 Q What about other files, pleadings? 18 A You've got to be more specific. I mean, 19 there are -- do you want me to go look at nursing 20 home cases that our Medicaid fraud offices looked 21 at? I mean, that's what it asked for. 22 Q Do you know whether any documents were 23 produced in response to that request? 24 A I did not look at all the documents that 25 have been produced in response to the request, no.</p>	<p style="text-align: right;">168</p> <p>1 accurate to the best of your knowledge? 2 A Best of my knowledge, information and 3 belief, just like it says in the verification. 4 Q Okay. Turning to page 2, I want to ask 5 you about interrogatory number one. Interrogatory 6 number one asked Lead Plaintiff to "Describe in 7 detail all representations, information, 8 recommendations or data upon which you relied in 9 making each purchase, acquisition, sale, transfer or 10 other transaction in Diamond securities as set forth 11 in Exhibit B to your court questionnaire to Lead 12 Plaintiff candidate," which was filed on 13 February 9th, 2012, in this matter; do you see that? 14 A I do. 15 Q And could you read the response to 16 interrogatory number one? That's on page 3. 17 A "Lead Plaintiff objects to this 18 interrogatory on the grounds that it is vague, 19 ambiguous and overbroad. Lead Plaintiff further 20 objects that this interrogatory constitutes a 21 contention interrogatory that is premature at this 22 stage of the litigation. Subject to and without 23 waiving the foregoing conclusions -- objections, 24 Lead Plaintiff responds that Diamond securities 25 traded in an efficient market and that Lead</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">169</p> <p>1 Plaintiff intends to rely on the fraud-on-the-market 2 presumption of reliance. Lead Plaintiff 3 additionally refers Diamond to the public statements 4 made by the defendants as identified in the 5 consolidated complaint as well as documents produced 6 in response to Diamond's first request for 7 production of documents to Lead Plaintiff." 8 Q What did you do to determine that Diamond 9 securities traded in an efficient market? 10 A I relied on representations from my 11 counsel. 12 Q What did you do to determine that you 13 would rely on the fraud-on-the-market presumption of 14 reliance? 15 A I relied on the knowledge base, the 16 experience and research based from our attorneys and 17 any experts they may have consulted. 18 Q Did you talk to anyone about this response 19 other than your counsel? 20 A No. 21 Q Do you know if counsel talked to the 22 investment manager -- 23 A No. 24 Q -- prior to this response? 25 Did you talk to the investment manager</p>	<p style="text-align: right;">171</p> <p>1 A Right. 2 Q And did you talk to anyone about that 3 response before this was served? 4 A I would have discussed each and every one 5 of these with counsel. 6 Q And did you do anything else to determine 7 that there was an efficient market for Diamond 8 securities? 9 A I haven't personally nor has Attorney 10 General's office nor has PERS done any kind of 11 analysis independent of anyone else that might show 12 an efficient market or fraud-on-the-market 13 presumption of reliance. We have -- we -- the 14 securities were bought on the New York Stock 15 Exchange, and typically, is my understanding, that 16 it's considered to be an efficient market. 17 Q Do you know when the consolidated 18 complaint in this action was filed by Lead 19 Plaintiff? 20 A When it was filed? I don't remember the 21 day. I mean, it was in 2012, but I don't remember 22 when. 23 Q And your verification, this is March 2013, 24 right? 25 A Uh-huh.</p>
<p style="text-align: right;">170</p> <p>1 prior to this response? 2 A No. 3 Q Do you know if anyone at PERS spoke to the 4 investment manager prior to this response? 5 A No. 6 Q Turning to interrogatory number two -- 7 A Okay. 8 Q -- interrogatory two asked Lead Plaintiff, 9 to "Identify all persons on whom you relied in 10 making any investment decision regarding Diamond 11 securities, including with respect to all of the 12 transaction in Diamond securities as set forth in 13 Exhibit B to the questionnaire that was earlier 14 defined"; do you see that? 15 A Uh-huh. 16 Q And can you tell me -- is anyone 17 identified in response to interrogatory number two, 18 any persons? 19 A Not -- it's not repeated, no. 20 Q And looking at line 21 and a half there, 21 it says, "Subject to and without waiving the 22 foregoing objections, Lead Plaintiff responds that 23 Diamond securities traded in an efficient market, 24 and Lead Plaintiff intends to rely on the 25 fraud-on-the-market presumption of reliance."</p>	<p style="text-align: right;">172</p> <p>1 Q And I can represent to you it's July 30th, 2 2012, the consolidated complaint was filed. 3 MS. BALFUS: July 30th, 2012. 4 MS. BRETAN: Okay. 5 Q And is the -- is -- do you know if the 6 complaint alleges that Diamond securities traded in 7 an efficient market and or not? 8 A It's like a 200 page document. I don't 9 remember everything that's in there. 10 Q What about -- did you have the sense that 11 Diamond was -- Lead Plaintiff was going to intend to 12 rely on the fraud-on-the-market presumption of 13 reliance? Were you aware of that? 14 A That Diamond was going to rely on it? 15 Q I'm sorry. That Lead Plaintiff was 16 intending to rely on the fraud of -- 17 fraud-on-the-market presumption of reliance? 18 A I've had numerous discussions with counsel 19 over the last year and a half about this case. I 20 don't remember the specific discussions that we may 21 have had about that particular tenet of the claim. 22 MS. BRETAN: 24? 23 (Exhibit 24 was marked for 24 identification by the court reporter.) 25 //</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">173</p> <p>1 BY MS. BRETAN:</p> <p>2 Q Exhibit 24, Mr. Neville, is "Lead</p> <p>3 Plaintiffs Mississippi PERS Supplemental Responses</p> <p>4 and Objections to Defendant Diamond Foods' First Set</p> <p>5 of Interrogatories"; do you see that?</p> <p>6 A Uh-huh.</p> <p>7 Q Are you familiar with this document?</p> <p>8 A Yes. It -- my memory of practicing law,</p> <p>9 there's bunches of different interrogatories and</p> <p>10 productions. Of course, they're limited by the</p> <p>11 rules, and Judge Alsup has some rules about what you</p> <p>12 can file and what you can't file, but you file</p> <p>13 answers. You supplement answers, and it goes on</p> <p>14 through the process that the court will allow.</p> <p>15 Q And this was dated March 29th, 2013,</p> <p>16 correct?</p> <p>17 A That's what it says, uh-huh.</p> <p>18 Q Just a few days ago?</p> <p>19 A That's right. That would be last week, I</p> <p>20 think.</p> <p>21 Q Does that -- do you remember looking at</p> <p>22 this document?</p> <p>23 A Yes. I mean, I would skim through it.</p> <p>24 Most of this one was shorter than the others. Yeah.</p> <p>25 Q And did you verify this document?</p>	<p style="text-align: right;">175</p> <p>1 A I'm not sure what your name is. I haven't</p> <p>2 seen your birth certificate. I mean, I -- I just --</p> <p>3 you know, I take it for your word that your name is</p> <p>4 really Jennifer Bretan -- Bretan. I mean, I -- I</p> <p>5 believe that my counsel is capable of pulling this</p> <p>6 information together. I looked at it, reviewed it,</p> <p>7 and I'm okay with it, but it might need to be</p> <p>8 supplemented later. I don't know. I mean, that</p> <p>9 happens a lot in lawsuits.</p> <p>10 MS. BRETAN: Okay. I don't believe we've</p> <p>11 been provided verification for that document.</p> <p>12 MR. HARNES: It was just executed. It was</p> <p>13 purely an issue of mechanics. If you want to mark</p> <p>14 this, as long as we get it back because it's the</p> <p>15 only copy we have.</p> <p>16 MS. BANKS: That is the only copy. I can</p> <p>17 have copies made.</p> <p>18 MS. BRETAN: Okay. Why don't we do that.</p> <p>19 We can come back to it.</p> <p>20 Q It looks like you verified these -- sorry</p> <p>21 -- these supplemental responses on April 3rd, 2013.</p> <p>22 A That would be today.</p> <p>23 Q 13. Is that today?</p> <p>24 A Yes.</p> <p>25 Q Is today the first time you had seen these</p>
<p style="text-align: right;">174</p> <p>1 A I have to rely on the representations of</p> <p>2 my client -- I mean, my attorney -- excuse me --</p> <p>3 about the substance, but as far as -- so I did not</p> <p>4 call -- for instance, if you look at response to</p> <p>5 interrogatory number two, line 14, it says, "Lead</p> <p>6 Plaintiff further responds that Artisan Partners</p> <p>7 Limited Partnership and Acadian Asset Management,</p> <p>8 Inc. and Wellington Management Company, LLP acted as</p> <p>9 investment advisor in connection with purchases and</p> <p>10 sales and executed them."</p> <p>11 So I -- I didn't call them and ask them if</p> <p>12 that's -- these three investment advisors, did they</p> <p>13 really do that, no, because I relied on them having</p> <p>14 access to the information to be able to provide it</p> <p>15 to us.</p> <p>16 Q All right. Did you verify these responses</p> <p>17 before they were served?</p> <p>18 A Before they were what?</p> <p>19 Q Served on March 29th, 2013?</p> <p>20 A I looked at it. It looked okay to me,</p> <p>21 but, again, I -- I -- but I didn't call these people</p> <p>22 and verify this -- that information, if that's what</p> <p>23 you're asking.</p> <p>24 Q So you're not sure if that information is</p> <p>25 accurate?</p>	<p style="text-align: right;">176</p> <p>1 responses?</p> <p>2 A No, I saw them last week when they emailed</p> <p>3 them to me, but I'm trying to remember which day. I</p> <p>4 think the 29th was Friday. I think it was Friday,</p> <p>5 and being that it was Good Friday, we weren't around</p> <p>6 all day.</p> <p>7 Q And what did you do when you received</p> <p>8 these supplemental responses to verify what was in</p> <p>9 them?</p> <p>10 MR. HARNES: I think that's been asked and</p> <p>11 answered, but you can go ahead and answer again.</p> <p>12 THE WITNESS: I got a confirmation from</p> <p>13 outside counsel that they felt comfortable that this</p> <p>14 was what needed to be in here.</p> <p>15 BY MS. BRETAN:</p> <p>16 Q And with respect to interrogatory number</p> <p>17 two, I know you mentioned that Artisan Partners was</p> <p>18 mentioned with respect to persons on whom you relied</p> <p>19 in making investment decisions in Diamond securities</p> <p>20 and the transactions in Diamond securities; is that</p> <p>21 right?</p> <p>22 A Well, what I'm -- what I understand</p> <p>23 because I don't -- I don't -- I certainly don't make</p> <p>24 investment decisions on behalf of PERS. They don't</p> <p>25 do any investment decisions in-house. There are</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">177</p> <p>1 public pension funds that do that. Alabama, for 2 instance, has a large or some significant portion of 3 their portfolio they manage in-house. So we don't 4 do that, and so it may be unique. I don't know. I 5 mean, I don't know -- I never sat down with CalPERS 6 people and know how state plan and the -- but I have 7 talked to those particular people that we deal with 8 or work with on those cases, and most of them have 9 some mix, but we don't.</p> <p>10 They hire these investment advisors, and 11 they make the decisions to buy and sell, and 12 Ms. Tingle, Ms. Robertson or the board of trustees' 13 members are not going to be able to call and 14 effectuate some investment or getting out of an 15 investment on their own. The investment advisors 16 follow whatever criteria that are set out by state 17 statute as well as the criteria from PERS in their 18 own best judgment. You know, the investment 19 advisors have niches, and if their market is 20 emerging country stock on an international scale, 21 presumably they're not supposed to be buying a 22 start-up tech company in Nevada because that's not 23 an emerging market out -- you know, globally, 24 outside the United States.</p> <p>25 But I don't even know the parameters.</p>	<p style="text-align: right;">179</p> <p>1 Q Have you read this document before? Don't 2 -- haven't seen it before?</p> <p>3 A I just I don't remember -- I don't have 4 any independent memory of reading this press 5 release.</p> <p>6 Q Looking at this announcement, is there 7 anything in this announcement -- can you tell me, 8 looking at the announcement, what it -- what it 9 says?</p> <p>10 MR. HARNES: I'm going to object to that 11 question.</p> <p>12 MS. BRETAN: And rephrase.</p> <p>13 MR. HARNES: I don't know if I need to 14 explain my explanation -- my objection.</p> <p>15 MS. BRETAN: You don't. I'm good with 16 that, John.</p> <p>17 Q The press release announces that "The 18 chairman of the audit committee of Diamond's board 19 had received an external communication regarding 20 Diamond's accounting for certain crop payments to 21 walnut growers"; do you see that?</p> <p>22 A Which paragraph are we talking about?</p> <p>23 Q The second paragraph.</p> <p>24 A Oh. Okay.</p> <p>25 Q And that "In response, Diamond's audit</p>
<p style="text-align: right;">178</p> <p>1 Ms. Tingle could testify to all of that, and they -- 2 you know, so they're supposed to stay within those 3 parameters, and they make their best judgment based 4 on the market and what is out there publicly. They 5 don't -- presumably, I don't think they have any 6 inside tracks. There's -- but they're supposed to 7 be knowledgeable and aware of things, and if they 8 get duped, we got duped.</p> <p>9 Q Artisan Partners wasn't -- wasn't listed 10 in response to interrogatory number two in the first 11 set of responses in Exhibit 23. Do you know why 12 that would be?</p> <p>13 A My understanding was that you all had been 14 provided the trading data and the investment 15 advisors that handled our -- long ago. I don't know 16 that -- that was my understanding. My understanding 17 was that you all demanded that it be listed again; 18 so it was.</p> <p>19 (Exhibit 25 was marked for 20 identification by the court reporter.)</p> <p>21 BY MS. BRETAN:</p> <p>22 Q Exhibit 25 is a press release dated 23 November 1st, 2011, from Diamond Foods. Do you 24 recognize this document?</p> <p>25 A I don't.</p>	<p style="text-align: right;">180</p> <p>1 committee had decided to perform an investigation of 2 the matter."</p> <p>3 A That's what it says.</p> <p>4 Q Does anything about that suggest to you 5 that there's been fraud?</p> <p>6 A I don't know that I am qualified to be 7 able to make a determination of a press release. I 8 mean, that's what a judge and jury is for.</p> <p>9 (Exhibit 26 was marked for 10 identification by the court reporter.)</p> <p>11 BY MS. BRETAN:</p> <p>12 Q Exhibit 26 is a press release dated 13 February 8th, 2012, produced by PERS in this action, 14 Bates number 1511. Have you seen this document 15 before?</p> <p>16 A I don't remember seeing this press 17 release.</p> <p>18 Q Do you recall reading this press release?</p> <p>19 A I mean, portions of these press releases 20 are in our complaint, but as far as reading the 21 press release in its entirety, I doubt that I have 22 done that, but I don't have any memory of doing it, 23 if I did.</p> <p>24 Q This press release announces that the 25 audit committee had completed its investigation --</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">181</p> <p>1 substantially completed its investigation and that</p> <p>2 there would be a restatement of certain financial</p> <p>3 results; is that right? Do you see that?</p> <p>4 A Down at the next to the last paragraph, it</p> <p>5 says, "It's working diligently to complete the</p> <p>6 restatements and will file all required reports."</p> <p>7 Okay.</p> <p>8 Q Is there anything about this announcement</p> <p>9 that suggests to you that there's been securities</p> <p>10 fraud?</p> <p>11 A I think it's the same answer I've given</p> <p>12 before. I mean, to take this document and other</p> <p>13 documents, it's got to be developed in the lawsuit</p> <p>14 in the trial, its impact at the time and its impact</p> <p>15 in a totality of the facts, and to pull out a press</p> <p>16 release and try to have me make some determination</p> <p>17 of whether I think personally that -- whether it's</p> <p>18 fraud or not is -- it's not my call. In the</p> <p>19 totality of all the circumstances that have -- took</p> <p>20 place in this case, I feel comfortable that there</p> <p>21 was fraud and that we'll prove it in court.</p> <p>22 Q Did you read the company's restatement</p> <p>23 materials?</p> <p>24 A No.</p> <p>25 Q Can you tell me what -- you just said that</p>	<p style="text-align: right;">183</p> <p>1 company, president, CFO, whatever. I don't think</p> <p>2 he's there anymore either. I think the board</p> <p>3 relieved both of them.</p> <p>4 THE VIDEOGRAPHER: I need to change the</p> <p>5 tape. Just one moment. This marks the end of tape</p> <p>6 number two in the deposition of George Neville.</p> <p>7 We're going off the record, and the time is</p> <p>8 1:05 p.m.</p> <p>9 (Recess.)</p> <p>10 THE VIDEOGRAPHER: Back on the record.</p> <p>11 This marks the beginning of tape number three in the</p> <p>12 deposition of George Neville. The time is 1:12 p.m.</p> <p>13 Go ahead.</p> <p>14 MS. BRETAN: We're marking as Exhibit 27</p> <p>15 the "Notice of Motion and Motion for Class</p> <p>16 Certification" and the "Memorandum of Points and</p> <p>17 Authorities" submitted by MPERS in this action.</p> <p>18 (Exhibit 27 was marked for</p> <p>19 identification by the court reporter.)</p> <p>20 BY MS. BRETAN:</p> <p>21 Q Mr. Neville, do you recognize this</p> <p>22 document?</p> <p>23 A Yes.</p> <p>24 Q And what is it?</p> <p>25 A It's a "Notice of Motion and Motion for</p>
<p style="text-align: right;">182</p> <p>1 you felt comfortable that there was fraud in this</p> <p>2 case. What -- can you just very basically tell me</p> <p>3 what the case is about?</p> <p>4 A Yeah, the company was playing games with</p> <p>5 the books and basically saying that payments that</p> <p>6 were going to growers for 2011 were actually for</p> <p>7 2012. They call them minimum payments. It was what</p> <p>8 I perceived to be a shell game of attempting to try</p> <p>9 to make the profitability of the company higher to</p> <p>10 keep the stock price up so that when they acquired</p> <p>11 the Pringles division of Proctor & Gamble, it would</p> <p>12 be easier for them financially to make the deal work</p> <p>13 because they would have more value in the stock of</p> <p>14 Diamond in order to make the acquisition. And they</p> <p>15 did that fraudulently by misrepresenting what the</p> <p>16 financial situation for the company was on their</p> <p>17 profit and losses.</p> <p>18 Q And who are the defendants in the case?</p> <p>19 A Diamond Foods and then Mr. Neil, I think</p> <p>20 it is, and Mr. Mendes.</p> <p>21 Q Who is Mr. Neil?</p> <p>22 A I think he was a CFO at one time. He's</p> <p>23 not now.</p> <p>24 Q And who is Mr. Mendes?</p> <p>25 A He was the chair -- the head of the</p>	<p style="text-align: right;">184</p> <p>1 Class Cert."</p> <p>2 Q Did you review this document prior to its</p> <p>3 filing?</p> <p>4 A Yes.</p> <p>5 Q Okay. And turning to page 13, this is the</p> <p>6 motion -- sorry. This is the "Motion by Lead</p> <p>7 Plaintiff to Certify a Class of All Purchasers in</p> <p>8 the Class Period."</p> <p>9 A I understand.</p> <p>10 Q Okay. And turning to page 13, line 14 and</p> <p>11 a half there, it notes that "During the class</p> <p>12 period, Mississippi PERS purchased 57,300 shares of</p> <p>13 Diamond common stock," and it cites to a</p> <p>14 certification by you, which is attached as Exhibit B</p> <p>15 to the declaration of Harnes; do you see that?</p> <p>16 A Uh-huh.</p> <p>17 MS. BRETAN: Okay. Let's go ahead and</p> <p>18 mark as 28 that declaration.</p> <p>19 (Exhibit 28 was marked for</p> <p>20 identification by the court reporter.)</p> <p>21 BY MS. BRETAN:</p> <p>22 Q So, Mr. Neville, Exhibit 28, is the</p> <p>23 declaration of Mr. Harnes in support of Lead</p> <p>24 Plaintiff's motion along with Exhibit B to that</p> <p>25 declaration; do you see that?</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">185</p> <p>1 A Right.</p> <p>2 Q And Exhibit B is a certification by you --</p> <p>3 A Okay.</p> <p>4 Q -- is that right?</p> <p>5 A Uh-huh.</p> <p>6 Q And, in fact, it's the certification we</p> <p>7 looked at. Is it the same certification we looked</p> <p>8 at earlier?</p> <p>9 A It looks like it. I can't say that</p> <p>10 there's a word or two missing, but it seems to be</p> <p>11 the same.</p> <p>12 Q Did you sign a new certification with</p> <p>13 respect to the class certification motion?</p> <p>14 A I don't remember doing that.</p> <p>15 Q And this certification is dated</p> <p>16 January 5th, 2012?</p> <p>17 A That's right.</p> <p>18 Q And the consolidated complaint in this</p> <p>19 action was filed July 30th, 2012, correct?</p> <p>20 A I don't remember.</p> <p>21 Q I can represent to you that it was</p> <p>22 July 30th, 2012.</p> <p>23 A Okay. All right.</p> <p>24 Q So looking at Exhibit 28 --</p> <p>25 A Okay.</p>	<p style="text-align: right;">187</p> <p>1 certification motion, there was a consolidated</p> <p>2 complaint on record; is that right?</p> <p>3 A I don't -- I just don't remember all the</p> <p>4 iterations. I know there was a complaint on file</p> <p>5 that we didn't file. We -- you are basically</p> <p>6 required to adopt it, and we did that. We filed a</p> <p>7 complaint later. I don't remember the specific</p> <p>8 dates.</p> <p>9 Q After this certification?</p> <p>10 A Yes.</p> <p>11 Q Okay. And so when you, in paragraph</p> <p>12 three, talk about a complaint filed in this action</p> <p>13 and adopting its allegations, that's still referring</p> <p>14 to that original complaint?</p> <p>15 A Yes. We covered this earlier this</p> <p>16 morning, yes.</p> <p>17 Q It's not referring to the consolidated</p> <p>18 complaint in this action?</p> <p>19 A We've already covered that this morning.</p> <p>20 This is talking about the original complaint filed</p> <p>21 in the action.</p> <p>22 Q Okay. So -- so there's been the new</p> <p>23 consolidated -- the consolidated complaint filed in</p> <p>24 July of 2012. Why did you not update your</p> <p>25 certification to reflect that that is the complaint</p>
<p style="text-align: right;">186</p> <p>1 Q -- which has -- Exhibit B is your</p> <p>2 certification from January of 2012, paragraph three</p> <p>3 says, "Mississippi PERS has reviewed the facts and</p> <p>4 allegations of a complaint filed in this action and</p> <p>5 adopts its allegations"; do you see that?</p> <p>6 A Right. I think we went over that when</p> <p>7 whatever exhibit number it is -- I was looking to</p> <p>8 see if I could find it, but we went over this</p> <p>9 already. Uh-huh.</p> <p>10 Q And you signed this in January of 2012,</p> <p>11 correct?</p> <p>12 A That's what it says.</p> <p>13 Q So what -- so at the time that you signed</p> <p>14 this, you weren't looking at the consolidated</p> <p>15 complaint in this action; is that correct?</p> <p>16 MR. HARNES: I think that's been asked and</p> <p>17 answered. Objection.</p> <p>18 THE WITNESS: The complaint I reviewed was</p> <p>19 the one on file. It was the name of the gentleman</p> <p>20 whose name I couldn't pronounce. That's what you --</p> <p>21 under the -- the PLSRA, you look at the complaint</p> <p>22 that's on record. That's what I did.</p> <p>23 BY MS. BRETAN:</p> <p>24 Q And at the time this certification was</p> <p>25 submitted to the court in connection with the class</p>	<p style="text-align: right;">188</p> <p>1 that you're looking at for purposes of this class</p> <p>2 certification motion?</p> <p>3 A I don't know that I have or haven't. I</p> <p>4 just -- I know that when you file for lead plaintiff</p> <p>5 status or request to be appointed as lead plaintiff,</p> <p>6 you have to file a certification, and that's what we</p> <p>7 did.</p> <p>8 Q Okay. So what -- the Exhibit 27 says, the</p> <p>9 class certification motion, is that during the class</p> <p>10 period, Mississippi PERS purchased 57,300 shares of</p> <p>11 Diamond common stock, correct?</p> <p>12 A That's what it says, right.</p> <p>13 Q And it cites to your certification,</p> <p>14 correct?</p> <p>15 A It does cite to that.</p> <p>16 Q And your certification was talking about</p> <p>17 the class period reflected in the original complaint</p> <p>18 filed in this action, correct?</p> <p>19 A The certification is required of PLSRA to</p> <p>20 be filed when you attempt to want to be lead</p> <p>21 plaintiff. We did that. We complied with the</p> <p>22 court. Sometimes there are errors made; sometimes</p> <p>23 they're not on the transactional data, but the</p> <p>24 transactional data is attached as schedule A to this</p> <p>25 certification. Over here on Exhibit 27, page 13, it</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">189</p> <p>1 says, "During the class period, Mississippi PERS 2 purchased 57,300 shares of Diamond common stock," 3 and then it refers you to the certification which 4 has Exhibit A attached to it. 5 Q And at the time -- 6 A It -- 7 Q -- of your certification -- sorry. I 8 don't mean to cut you off. 9 A You -- I think you used the phraseology 10 that we adopted that certification. It just refers 11 you to it. Just the "see" is in Italics -- the 12 s-e-e is in Italics much like if you were to tell 13 somebody to go look at a court case. 14 Q So turning back to Exhibit 28, paragraph 15 three of Exhibit 28 says -- this is your 16 certification -- "Mississippi PERS has reviewed the 17 facts and allegations of a complaint filed in this 18 action and adopts its allegations." That's where 19 that language came from. Do you see that? 20 A Uh-huh, it's right there in front of me. 21 Q Okay. And you testified that you were 22 adopting the allegations based on your review of the 23 original complaint in the case? 24 MR. HARNES: Objection. His testimony is 25 what it is.</p>	<p style="text-align: right;">191</p> <p>1 You have asked me if I am comfortable with 2 the latest complaint we're dealing with right now, 3 and I said yes. So if you -- if you want me to 4 certify it, put it in front of me and I'll put my 5 hands on it, and you want me to certify that I'm 6 comfortable with it and I adopt it, I'll do that, 7 but I just -- I'm really lost at the point you're 8 trying to make here. 9 Q Well, if the class period has changed, is 10 it your understanding that the transactions 11 reflected on schedule A remain the same; do you 12 know? 13 A Well, the transactions aren't going to 14 change. It could be that there are more 15 transactions or less transactions, right. 16 Q In the class period? 17 A If the class period changes -- 18 unfortunately -- I say "unfortunately" -- we sold -- 19 I'm taking your representation of it that we sold -- 20 because I didn't do the math on Exhibit -- schedule 21 A of my certification to Exhibit 28 that we sold all 22 of our stock by November 16th of 2011. If that is 23 true, then I can't create more transactions because 24 there are not any. 25 Q But you don't know if there were</p>
<p style="text-align: right;">190</p> <p>1 THE WITNESS: I've said this numerous 2 times. I mean, I don't know what -- I mean, how I 3 can make this any more clear. 4 BY MS. BRETAN: 5 Q Your certification is about Mississippi 6 PERS representing a class of individuals, correct? 7 A That's what we're doing now as the lead 8 plaintiff. If the court allows us under the class 9 certification motion to be the class representative, 10 then that's the role that we will play. 11 Q And the class period has changed 12 subsequent to this certification? 13 A That's my memory, but I would have to look 14 at the document -- the complaint itself to see, but 15 it's so common that the class periods change or 16 narrow based -- through the process of litigation in 17 these -- in these security cases I've been on. I 18 just don't independently sit here and remember the 19 exact dates and when they -- if they changed, when 20 they changed and what was added, not added. I just 21 don't remember all of the details of that. The 22 complaint speaks for itself. It's very detailed. 23 It's very plain written. I think you can read it 24 and understand what it is that we are wanting to 25 accomplish here.</p>	<p style="text-align: right;">192</p> <p>1 additional purchases subsequent to that? 2 A I don't have that electronic access. I 3 have to rely on my counsel to be able to provide me 4 that his ---I could call Ms. Tingle or 5 Ms. Robertson, and they could provide it to me, but 6 I don't -- I don't have to put them through that 7 effort because that's why our counsel has electronic 8 access, so they can do that manual -- in essence, 9 manual work so the PERS staff is not -- or I don't 10 have to go and try and dig that up. 11 Q Do you report on the securities 12 litigations to PERS in any way? 13 A I don't directly. There is an update that 14 is provided to them, uh-huh. 15 Q And who provides that update? 16 A Well, I generally work it up with 17 assistance of the counsel about the status of 18 different cases. 19 Q And is that information provided to the 20 board of PERS? 21 A Yes. 22 Q And you're representing PERS? 23 A That's right. 24 MS. BRETAN: Okay. I'm going to mark as 25 Exhibit 29 a PERS of Mississippi mid-cap growth</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">193</p> <p>1 fiduciary review, parts one and two, for Artisan 2 Partners Limited Partnership. 3 (Exhibit 29 was marked for 4 identification by the court reporter.) 5 BY MS. BRETAN: 6 Q Have you seen this document before, 7 Mr. Neville? 8 A No. 9 Q Do you know what it is? 10 A No. 11 Q Okay. Were you aware that Mississippi 12 PERS has its investment managers provide information 13 in this fiduciary -- this type of fiduciary review? 14 A No. 15 Q And turning to the second page, this is 16 Bates-labeled 11839 through 11840. Turning to part 17 three of the review, it says, "Political 18 Contributions"; do you see that? 19 A Uh-huh. 20 Q And it asks Artisan Partners to provide a 21 copy of the current policy and procedures related to 22 monitoring and reporting campaign contributions; do 23 you see that? 24 A Uh-huh. 25 Q Why would PERS want a policy -- a copy of</p>	<p style="text-align: right;">195</p> <p>1 Q -- would want to know about -- 2 A No. 3 Q Let me finish my question. 4 A Well, it's "No" for everything. 5 Q That's fine. Let me just finish my 6 question. Any understanding of why Mississippi PERS 7 would, in its fiduciary review of Artisan Partners, 8 want to know about contributions made by Artisan 9 Partners or associates of Artisan Partners to 10 government officials, including political 11 candidates, PACs or state or local -- 12 A No. 13 Q -- parties in Mississippi? 14 A Don't have a clue. 15 Q Why do you think? 16 A I don't have an opinion. 17 Q You have no opinion on why they might want 18 to know about political campaign contributions? 19 A You've asked this about 15 different ways, 20 and the answer is no. I don't have a clue. I've 21 never seen this. I've never talked to them. I 22 didn't know it existed. I don't know. Ms. Tingle 23 is going to be testifying for you. She works at 24 PERS. Why don't you ask her? You're going to 25 depose Mike Morrison. Ask him. You're asking</p>
<p style="text-align: right;">194</p> <p>1 the current policy and procedures related to 2 monitoring and reporting campaign contributions from 3 Artisan Partners? 4 A I have no idea. 5 Q And in response it looks like Artisan 6 Partners provides a "pay to play" policy? 7 A I have no idea. 8 Q Do you see that? That's what it says. 9 A I see that's what it says, but, I mean, I 10 think I've told you I don't know what this is. I 11 didn't know. I don't -- have never seen it, don't 12 know what it means, don't know nothing. 13 Q Okay. And part B under part three, 14 provision B, asks for Artisan Partners to "Provide a 15 list of any contributions made by Artisan, your firm 16 or any associate of your firm to any government 17 officials, including political candidates, PACs or 18 state or local parties in Mississippi"; do you see 19 that? 20 A I -- you read it correctly. 21 Q Do you have any idea why Mississippi 22 PERS -- 23 A No. 24 Q -- in its fiduciary review -- 25 A No.</p>	<p style="text-align: right;">196</p> <p>1 somebody who has told you 14 different ways I'm 2 unfamiliar with it, don't know what it is. You 3 can't keep asking me questions about my 4 understanding of it for anything like that because I 5 don't know. 6 Q Okay. Mr. Neville, you're a fiduciary on 7 behalf of PERS, correct, in this -- 8 A Sure. 9 Q -- litigation? Correct? 10 A I'm their counsel. 11 Q And you're a fiduciary on behalf of the 12 class, correct? 13 A Right. That's right. 14 Q And PERS, who you're representing -- it's 15 important to PERS, apparently, that its investment 16 managers fill out information in a fiduciary review, 17 correct? 18 MR. HARNES: I'll object to that question. 19 THE WITNESS: I don't know what this is 20 about. It could be because the state treasurer is 21 on the board and they're elected. It could be 22 because the governor is elected and he's got a 23 designee. I don't know, but you've got some people 24 you can ask this, but I'm not the guy to be asking. 25 //</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">197</p> <p>1 BY MS. BRETAN:</p> <p>2 Q Do you know whether the contracts with --</p> <p>3 sorry.</p> <p>4 Mississippi PERS has contracts with its</p> <p>5 investment managers; is that correct, to your</p> <p>6 understanding?</p> <p>7 A Yes. I understand a 30(b)(6) -- you know,</p> <p>8 I hate to be kind of being a jerk, but this is a</p> <p>9 30(b)(6) notice. We divided the responsibilities.</p> <p>10 These questions are for Ms. Tingle, and you know</p> <p>11 that. So I don't understand why you keep asking me</p> <p>12 questions that we have said she's handling.</p> <p>13 Q I just --</p> <p>14 A Investment advisors, how PERS operates and</p> <p>15 how they buy stocks and sell stocks and how all that</p> <p>16 stuff is delegated out and who gets hired as</p> <p>17 investment advisor, she can tell you that stuff up</p> <p>18 and -- she is very smart and very knowledgeable</p> <p>19 about all of this, the day-to-day type things. This</p> <p>20 document I'm unfamiliar with. I don't know. Ask</p> <p>21 her.</p> <p>22 Q Okay. I'm just interested in,</p> <p>23 Mr. Neville, whether you were aware as a fiduciary</p> <p>24 on behalf of PERS --</p> <p>25 A I'm not aware.</p>	<p style="text-align: right;">199</p> <p>1 may have discussed House Bill 211 with ...</p> <p>2 A I don't know whether she did. It's</p> <p>3 attorney-client privilege.</p> <p>4 Q Is the Attorney General the counsel for</p> <p>5 PERS with respect to House Bill 211?</p> <p>6 A It's counsel to PERS on everything unless</p> <p>7 we have need of an outside counsel to help on a</p> <p>8 matter where there's a bankruptcy issue or whether,</p> <p>9 as I told you, they get sued because somebody wants</p> <p>10 them to disgorge monies from when a company was</p> <p>11 acquired. Otherwise, we provide full counsel for</p> <p>12 them.</p> <p>13 Q Is House Bill 211 the law now?</p> <p>14 A It was signed by the governor.</p> <p>15 Q And so does the retention agreement in</p> <p>16 this case with the Chitwood firm -- would it pass</p> <p>17 muster under that law?</p> <p>18 MR. HARNES: I'm going to object to that.</p> <p>19 I mean, you can --</p> <p>20 THE WITNESS: Well, that's irrelevant.</p> <p>21 MR. HARNES: You can answer it if you want</p> <p>22 to.</p> <p>23 THE WITNESS: It doesn't matter because</p> <p>24 it's not -- it wasn't the law at the time it was</p> <p>25 entered into.</p>
<p style="text-align: right;">198</p> <p>1 Q -- that PERS wanted to know about -- wants</p> <p>2 to know about whether the investment managers with</p> <p>3 whom it contracts have made political campaign</p> <p>4 contributions to state officials or PACs. That's</p> <p>5 all I'm asking.</p> <p>6 MR. HARNES: I object to the form of the</p> <p>7 question and the lack of foundation.</p> <p>8 THE WITNESS: I've told you, no, I don't</p> <p>9 know. You need to ask the right people.</p> <p>10 BY MS. BRETAN:</p> <p>11 Q Has the Attorney General's office ever</p> <p>12 discussed with PERS the Sunshine Act, House Bill</p> <p>13 211, that we discussed earlier?</p> <p>14 A Jane Mapp, who is the counsel that works</p> <p>15 over there every day, she may have. I have not.</p> <p>16 Q And --</p> <p>17 A And --</p> <p>18 Q -- and so you're --</p> <p>19 A -- it's not Sunshine, House Bill 211,</p> <p>20 because there's no sunshine.</p> <p>21 MR. HARNES: I was hoping we could get</p> <p>22 past without you throwing that in. That's all</p> <p>23 right.</p> <p>24 BY MS. BRETAN:</p> <p>25 Q So you're not aware -- you think Ms. Mapp</p>	<p style="text-align: right;">200</p> <p>1 BY MS. BRETAN:</p> <p>2 Q And it was effective in July of 2012?</p> <p>3 A July 1.</p> <p>4 Q Uh-huh. And that's just shortly after</p> <p>5 lead counsel was appointed in this case?</p> <p>6 MR. HARNES: Object to the form of the</p> <p>7 question.</p> <p>8 THE WITNESS: I've got to go. You</p> <p>9 finished?</p> <p>10 MS. BRETAN: I'm done, but I think --</p> <p>11 MR. MARTIN: Five questions for you. Do</p> <p>12 you want to swap mics?</p> <p>13 THE VIDEOGRAPHER: Absolutely. Do you</p> <p>14 want to go off the record or stay on?</p> <p>15 MR. MARTIN: It's whatever --</p> <p>16 THE VIDEOGRAPHER: You can stay on if it's</p> <p>17 just a quick change.</p> <p>18 EXAMINATION</p> <p>19 BY MR. MARTIN:</p> <p>20 Q Thank you, Mr. Neville. I'll be quick.</p> <p>21 My name is Robert Martin. I represent Michael</p> <p>22 Mendes. Do you know who I'm referring to when ...?</p> <p>23 A It's my understanding, I think he was</p> <p>24 president or chairman of the board or chief</p> <p>25 executive officer. I can't remember his exact</p>


GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">201</p> <p>1 title.</p> <p>2 Q Did you, the Attorney General's office or</p> <p>3 MPERS have any contact with Michael Mendes or any</p> <p>4 communications with him?</p> <p>5 A Certainly not involved in this case, I</p> <p>6 don't believe. I mean, if I saw him at a social</p> <p>7 gathering or something like that, I mean, I can't</p> <p>8 tell you.</p> <p>9 Q But to your knowledge you're --</p> <p>10 A No.</p> <p>11 Q Are you aware of any documents between</p> <p>12 you, MPERS or the Attorney General's office and</p> <p>13 Mr. Mendes?</p> <p>14 A I can't imagine that there would be, no.</p> <p>15 Q So you're not aware of any?</p> <p>16 A I'm not aware of any, but I can't imagine</p> <p>17 that there would be.</p> <p>18 Q Are you aware of any prior litigation</p> <p>19 against Mr. Mendes by the Mississippi Attorney</p> <p>20 General's office or MPERS?</p> <p>21 A No.</p> <p>22 Q Are you aware of any documents referring</p> <p>23 to Mr. Mendes that were in your possession and the</p> <p>24 possession of the AG's office or in the possession</p> <p>25 of MPERS?</p>	<p style="text-align: right;">203</p> <p>1 hotel?</p> <p>2 THE WITNESS: Uh-huh.</p> <p>3 RE-EXAMINATION</p> <p>4 BY MS. BRETAN:</p> <p>5 Q I want to go back to -- let me mark one</p> <p>6 more exhibit.</p> <p>7 (Exhibit 30 was marked for</p> <p>8 identification by the court reporter.)</p> <p>9 BY MS. BRETAN:</p> <p>10 Q Exhibit 30. Mr. Neville, Exhibit 30 is a</p> <p>11 set of reports of receipts by Attorney General Hood</p> <p>12 during the periods January 1st, 2010, through</p> <p>13 December 31st, 2010, and I just want to ask you</p> <p>14 about one item on here. It's the last tab.</p> <p>15 MS. BAFUS: Second to the last.</p> <p>16 BY MS. BRETAN:</p> <p>17 Q Second-to-the-last tab. Do you see that</p> <p>18 highlight?</p> <p>19 A Uh-huh.</p> <p>20 Q Can you tell me -- it looks like there was</p> <p>21 a contribution refunded to Weight Watchers in</p> <p>22 greater Mississippi of, I think, \$2,000. Is that --</p> <p>23 do you see that?</p> <p>24 MR. HARNES: What page? Oh.</p> <p>25 MS. BRETAN: It's the second-to- -- it's</p>
<p style="text-align: right;">202</p> <p>1 A Not prior to us being approached about</p> <p>2 doing the case.</p> <p>3 Q So would any such documents referring to</p> <p>4 Mr. Mendes -- would those have been produced in</p> <p>5 response to the RFP in response to Diamond's request</p> <p>6 for production?</p> <p>7 A Well, they would be privileged because it</p> <p>8 would be, you know, an analysis.</p> <p>9 Q Putting aside non-privileged or just --</p> <p>10 A Okay.</p> <p>11 Q Putting aside --</p> <p>12 A I can't --</p> <p>13 Q -- non-privileged documents, are you aware</p> <p>14 of any documents that referred to Mr. Mendes or</p> <p>15 related to Mr. Mendes?</p> <p>16 A I doubt that there would be anything like</p> <p>17 that.</p> <p>18 Q Okay. So to your knowledge there aren't</p> <p>19 any?</p> <p>20 A Not to my knowledge.</p> <p>21 MR. MARTIN: Okay. Thank you very much.</p> <p>22 MS. BRETAN: I have one more question for</p> <p>23 you, Mr. Neville. I apologize. We'll make it</p> <p>24 quick.</p> <p>25 MR. HARNES: You have to get back to your</p>	<p style="text-align: right;">204</p> <p>1 the page, my eyesight, 23 of 26.</p> <p>2 THE WITNESS: I don't know whether it was</p> <p>3 a -- it appears to me -- and I didn't prepare these</p> <p>4 reports. I haven't seen the reports, but it appears</p> <p>5 to me that the Weight Watchers in greater</p> <p>6 Mississippi made two different contributions, \$1,000</p> <p>7 apiece, one of them on April 25th, 2010, and the</p> <p>8 second one on December 13th, 2010, and the</p> <p>9 December 13th, 2010, contribution was refunded on</p> <p>10 1/18.</p> <p>11 BY MS. BRETAN:</p> <p>12 Q What -- any -- do you know why a</p> <p>13 contribution would be refunded?</p> <p>14 A In this particular case I don't know, but</p> <p>15 I can tell you that the state law on</p> <p>16 contributions -- there's a statute maybe now not</p> <p>17 effective because of the U.S. Supreme Court's ruling</p> <p>18 in -- whatever it was, I can't remember about --</p> <p>19 anyway, the \$1,000 is the most a corporation can</p> <p>20 give. An individual is unlimited in Mississippi.</p> <p>21 So my guess is that when he gave -- it says "Corp"</p> <p>22 on the far -- the next-to-the-last column says,</p> <p>23 "Corp, \$1,000," and then there was a second</p> <p>24 contribution. I don't know what Charleston Place is</p> <p>25 because that's not -- I don't know whether -- my</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">205</p> <p>1 guess is that there was two \$1,000 contributions</p> <p>2 made. You can only have one per calendar year. So</p> <p>3 these January 1 through December 31 you can only --</p> <p>4 a corporation can only cut a check for \$1,000.</p> <p>5 Q Is there a contract with -- by the</p> <p>6 Attorney General with Weight Watchers?</p> <p>7 A I don't know. I know that we have a</p> <p>8 program of -- a weight loss program for the state,</p> <p>9 AG's employees with Weight Watchers, but I don't</p> <p>10 know -- I guess there was a contract. I don't know.</p> <p>11 I had never -- fortunately, I'm not -- I don't need</p> <p>12 their services, but if I keep eating like I've been</p> <p>13 eating, I will.</p> <p>14 MS. BRETAN: There you go. All right.</p> <p>15 Thank you, Mr. Neville.</p> <p>16 THE VIDEOGRAPHER: Anything else from</p> <p>17 anyone? Okay. I'll close out the depo. Just give</p> <p>18 me a minute. This concludes tape number three and</p> <p>19 the end of the videotaped deposition of 30(b)(6)</p> <p>20 witness George Neville. We're going off the record</p> <p>21 on April 3, 2013, and the time is 1:39 p.m.</p> <p>22 (TIME NOTED: 1:39 p.m.)</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">207</p> <p>1 DEPOSITION ERRATA SHEET</p> <p>2</p> <p>3</p> <p>4 Our Assignment No. 508275</p> <p>5 Case Caption: IN RE: DIAMOND FOODS, INC.</p> <p>6 SECURITIES</p> <p>7</p> <p>8 DECLARATION UNDER PENALTY OF PERJURY</p> <p>9 I declare under penalty of perjury that I have read the</p> <p>10 entire transcript of my Deposition taken in the</p> <p>11 captioned matter or the same has been read to me, and</p> <p>12 the same is true and accurate, save and except for</p> <p>13 changes and/or corrections, if any, as indicated by me</p> <p>14 on the DEPOSITION ERRATA SHEET hereof, with the</p> <p>15 understanding that I offer these changes as if still</p> <p>16 under oath.</p> <p>17</p> <p>18 Signed on the _____ day of _____, 20____.</p> <p>19 _____</p> <p>20 GEORGE W. NEVILLE</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">206</p> <p>1 REPORTER'S CERTIFICATION</p> <p>2</p> <p>3 I, Catherine A. Ryan, Certified Shorthand</p> <p>4 Reporter in and for the State of California, do</p> <p>5 hereby certify:</p> <p>6</p> <p>7 That the foregoing witness was by me duly</p> <p>8 sworn, that the deposition was then taken before me</p> <p>9 at the time and place herein set forth; that the</p> <p>10 testimony and proceedings were reported</p> <p>11 stenographically by me and later transcribed into</p> <p>12 typewriting under my direction; that the foregoing</p> <p>13 is a true record of the testimony and proceedings</p> <p>14 taken at that time.</p> <p>15</p> <p>16 IN WITNESS WHEREOF, I have subscribed my</p> <p>17 name this _____ day of _____,</p> <p>18 _____.</p> <p>19  <i>Catherine A. Ryan</i></p> <p>20 _____</p> <p>21 Catherine A. Ryan, RMR, CRR, CSR No. 8239</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">208</p> <p>1 DEPOSITION ERRATA SHEET</p> <p>2 Page No. _____ Line No. _____ Change to: _____</p> <p>3 _____</p> <p>4 Reason for change: _____</p> <p>5 Page No. _____ Line No. _____ Change to: _____</p> <p>6 _____</p> <p>7 Reason for change: _____</p> <p>8 Page No. _____ Line No. _____ Change to: _____</p> <p>9 _____</p> <p>10 Reason for change: _____</p> <p>11 Page No. _____ Line No. _____ Change to: _____</p> <p>12 _____</p> <p>13 Reason for change: _____</p> <p>14 Page No. _____ Line No. _____ Change to: _____</p> <p>15 _____</p> <p>16 Reason for change: _____</p> <p>17 Page No. _____ Line No. _____ Change to: _____</p> <p>18 _____</p> <p>19 Reason for change: _____</p> <p>20 Page No. _____ Line No. _____ Change to: _____</p> <p>21 _____</p> <p>22 Reason for change: _____</p> <p>23 _____</p> <p>24 SIGNATURE: _____ DATE: _____</p> <p>25 GEORGE W. NEVILLE</p>

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">209</p> <p>1 DEPOSITION ERRATA SHEET</p> <p>2 Page No. _____ Line No. _____ Change to: _____</p> <p>3 _____</p> <p>4 Reason for change: _____</p> <p>5 Page No. _____ Line No. _____ Change to: _____</p> <p>6 _____</p> <p>7 Reason for change: _____</p> <p>8 Page No. _____ Line No. _____ Change to: _____</p> <p>9 _____</p> <p>10 Reason for change: _____</p> <p>11 Page No. _____ Line No. _____ Change to: _____</p> <p>12 _____</p> <p>13 Reason for change: _____</p> <p>14 Page No. _____ Line No. _____ Change to: _____</p> <p>15 _____</p> <p>16 Reason for change: _____</p> <p>17 Page No. _____ Line No. _____ Change to: _____</p> <p>18 _____</p> <p>19 Reason for change: _____</p> <p>20 Page No. _____ Line No. _____ Change to: _____</p> <p>21 _____</p> <p>22 Reason for change: _____</p> <p>23 _____</p> <p>24 SIGNATURE: _____ DATE: _____</p> <p>25 GEORGE W. NEVILLE</p>	

GEORGE W. NEVILLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

Page 206

REPORTER'S CERTIFICATION

I, Catherine A. Ryan, Certified Shorthand
Reporter in and for the State of California, do
hereby certify:

That the foregoing witness was by me duly
sworn, that the deposition was then taken before me
at the time and place herein set forth; that the
testimony and proceedings were reported
stenographically by me and later transcribed into
typewriting under my direction; that the foregoing
is a true record of the testimony and proceedings
taken at that time.

IN WITNESS WHEREOF, I have subscribed my
name this 5 day of
April, 2013.



Catherine A. Ryan

Catherine A. Ryan, RMR, CRR, CSR No. 8239

Exhibit 2

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: center;">1</p> <p style="text-align: center;">UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA SAN FRANCISCO DIVISION</p> <p>IN RE DIAMOND FOODS, INC.,) SECURITIES LITIGATION))) CASE NO. 11-cv-05386-WHA))) This Document Relates to:)) All Actions.))</p> <p style="text-align: center;">30(b)(6) DEPOSITION OF LORRIE SMITH TINGLE</p> <p style="text-align: center;">April 3, 2013 2:17 p.m.</p> <p style="text-align: center;">Lieff, Cabraser, Heimann & Bernstein, LLP 275 Battery Street, 29th Floor San Francisco, California 94111</p> <p style="text-align: center;">Catherine A. Ryan, RMR, CRR, CSR No. 8239</p>	<p style="text-align: right;">3</p> <p>1 APPEARANCES (Continued)</p> <p>2</p> <p>3 For the Defendant Steven Neil:</p> <p>4 HOGAN LOVELLS US LLP</p> <p>5 BY: AVI DANIEL ROSENBLIT, ESQ.</p> <p>6 3 Embarcadero Center, Suite 1500</p> <p>7 San Francisco, California 94111</p> <p>8 415.374.2314</p> <p>9 415.374.2499 Fax</p> <p>10 avi.rosenblit@hoganlovells.com</p> <p>11</p> <p>12 Also Present:</p> <p>13</p> <p>14 Videographer:</p> <p>15</p> <p>16 NANCY KARP, ESQUIRE DEPOSITION SOLUTIONS</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: center;">2</p> <p>1 APPEARANCES OF COUNSEL</p> <p>2</p> <p>3 For the Lead Plaintiff Mississippi PERS:</p> <p>4 CHITWOOD HARLEY HARNES</p> <p>5 BY: JOHN F. HARNES, ESQ.</p> <p>6 1350 Broadway, Suite 908</p> <p>7 New York, New York 10018</p> <p>8 917.595.4600</p> <p>9 jfharnes@chitwoodlaw.com</p> <p>10</p> <p>11 BY: ZE'EVA KUSHNER BANKS, ESQ.</p> <p>12 2300 Promenade II</p> <p>13 1230 Peachtree Street</p> <p>14 Atlanta, Georgia 30309</p> <p>15 404.873.3900</p> <p>16 404.876.4476 Fax</p> <p>17 zbanks@chitwoodlaw.com</p> <p>18</p> <p>19 For the Defendant Diamond Foods:</p> <p>20 FENWICK & WEST, LLP</p> <p>21 BY: JENNIFER C. BRETAN, ESQ.</p> <p>22 MARIE BAFUS, ESQ.</p> <p>23 555 California Street, 12th Floor</p> <p>24 San Francisco, California 94104</p> <p>25 415.875.2412 (Ms. Bretan)</p> <p>415.875.2371 (Ms. Bafus)</p> <p>415.281.1350 Fax</p> <p>jbretan@fenwick.com</p> <p>mbafus@fenwick.com</p> <p>For the Defendant Michael Mendes:</p> <p>SIDLEY AUSTIN, LLP</p> <p>BY: ROBERT B. MARTIN, ESQ.</p> <p>555 California Street</p> <p>San Francisco, California 94104</p> <p>415.772.7443</p> <p>415.772.4000 Fax</p> <p>rbmartin@sidley.com</p> <p>//</p>	<p style="text-align: right;">4</p> <p>1 INDEX OF EXAMINATION</p> <p>2</p> <p>3 WITNESS: LORRIE SMITH TINGLE</p> <p>4 EXAMINATION PAGE</p> <p>5 By Ms. Bretan 9</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">5</p> <p>1 INDEX TO EXHIBITS</p> <p>2 Exhibit Description Page</p> <p>3 Exhibit 31 "Introduction"; Bates MSPERS 003328 - 31 MSPERS 003386</p> <p>4</p> <p>5 Exhibit 32 "BNY Mellon Security History 45 Transactions Consolidated 1/31/2009 - 6/30/2012"; Bates MSPERS 009182</p> <p>6</p> <p>7 Exhibit 33 "Public Employees' Retirement System 49 of Mississippi Investment Management Agreement"; Bates MSPERS 003317 - 8 MSPERS 003327</p> <p>9 Exhibit 34 "Artisan Partners Domestic Mid Cap 53 Growth Equity as of December 31, 10 2010"; Bates MSPERS 012270 - MSPERS 012273</p> <p>11</p> <p>12 Exhibit 35 Email series, "Subject: FW: Artisan 59 Reporting - ADV" and attachment; Bates MSPERS 010175 - MSPERS 010316</p> <p>13</p> <p>14 Exhibit 36 "Public Employees' Retirement System 72 Board of Trustees, Tuesday, June 22, 2010, 1:00 P.M. Agenda"; Bates MSPERS 009384 - MSPERS 009416</p> <p>15</p> <p>16 Exhibit 37 "Public Employees' Retirement System 76 Board of Trustees, Tuesday, December 21, 2010, 1:00 P.M., Agenda"; Bates MSPERS 009788 - MSPERS 009833</p> <p>17</p> <p>18 Exhibit 38 "Public Employees' Retirement System 80 Board of Trustees, Wednesday, April 27, 2001, 1:00 P.M., Agenda"; Bates MSPERS 009372 - MSPERS 009383</p> <p>19</p> <p>20 Exhibit 39 Email dated August 15, 2011, "Subject: 83 Artisan Conference Call - August 16, 2011" and attachment; Bates MSPERS 010565 - MSPERS 010598</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25 //</p>	<p style="text-align: right;">7</p> <p>1 INDEX (Continued)</p> <p>2 EXHIBITS</p> <p>3 EXHIBIT DESCRIPTION PAGE</p> <p>4 Exhibit 47 "Board of Trustees Minutes, Public 114 Employees' Retirement System, June 26, 5 2012, Page 1"; Bates MSPERS 008993 - MSPERS 009029</p> <p>6</p> <p>7 Exhibit 48 "Investment Department Record 122 Retention Policy As of 1/1/2012"; Bates MSPERS 003718</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">6</p> <p>1 INDEX (Continued)</p> <p>2 EXHIBITS</p> <p>3 EXHIBIT DESCRIPTION PAGE</p> <p>4 Exhibit 40 Email dated October 11, 2011, 88 "Subject: Artisan 5 Reporting-Mississippi Employees' Retirement MCG 6 (Pack_MissPERS_artmc235)" and attachment; Bates MSPERS 011277 - 7 MSPERS 011302</p> <p>8 Exhibit 41 Email dated October 17, 2011, 91 "Subject: Mississippi PERS Quarterly 9 Portfolio Manager Letter" and attachment; Bates MSPERS 011843 - 10 MSPERS 0011849</p> <p>11 Exhibit 42 Email dated December 09, 2011, 95 "Subject: Artisan 12 Reporting-Mississippi Employees' Retirement MCG 13 (Pack_MissPERS_artmc235)"; and attachment; Bates MSPERS 011303 - 14 MSPERS 0011325</p> <p>15 Exhibit 43 "Annual Report Public Employees' 99 Retirement System of Mississippi - MCG 16 Performance Summary As of December 31, 2011"; Bates MSPERS 011326 - MSPERS 17 011330</p> <p>18 Exhibit 44 Email dated January 17, 2012, 101 "Subject: Mississippi PERS Quarterly 19 Portfolio Manager Letter" and attachment; Bates MSPERS 011850 - 20 MSPERS 011856</p> <p>21 Exhibit 45 "Public Employees' Retirement System 105 Board of Trustees, Tuesday, February 22 28, 2012, 1:00 P.M., Agenda"; Bates MSPERS 008620 - MSPERS 008723</p> <p>23</p> <p>24 Exhibit 46 "Public Employees' Retirement System 108 Board of Trustees, Tuesday, April 24, 2012, 1:00 P.M., Agenda"; Bates MSPERS 008764 - MSPERS 008945</p> <p>25</p>	<p style="text-align: right;">8</p> <p>1 DEPOSITION OF LORRIE SMITH TINGLE</p> <p>2 April 3, 2013</p> <p>3</p> <p>4 THE VIDEOGRAPHER: Good afternoon. We are</p> <p>5 on the record. This is tape number one in the</p> <p>6 videotaped deposition of Lorrie Tingle, In Re</p> <p>7 Diamond Foods, Inc. Securities Litigation. Excuse</p> <p>8 me. Being heard before the United States District</p> <p>9 Court, Northern District of California, San</p> <p>10 Francisco Division. Case number is CV-11-05386-WHA.</p> <p>11 This deposition is being held at the law offices of</p> <p>12 Lieff Cabraser, 275 Battery Street in San Francisco,</p> <p>13 California. Today's date is April 3, 2013, and the</p> <p>14 time on the record is 2:17 p.m. My name is Nancy</p> <p>15 Karp, and I'm the videographer with Esquire. The</p> <p>16 court reporter is Catherine Ryan.</p> <p>17 Counsel, will you please introduce</p> <p>18 yourselves and affiliations and the witness will be</p> <p>19 sworn.</p> <p>20 MS. BRETAN: Jennifer Bretan on behalf of</p> <p>21 Defendant Diamond Foods.</p> <p>22 MS. BAFUS: Marie Bafus from Fenwick &</p> <p>23 West on behalf of Defendant Diamond Foods.</p> <p>24 MR. MARTIN: Robert Martin of Sidley</p> <p>25 Austin on behalf of Defendant Michael Mendes.</p>

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">9</p> <p>1 MR. ROSENBLIT: Ari Rosenblit on behalf of</p> <p>2 Steven Neil, from Hogan Lovells.</p> <p>3 MS. BANKS: Ze'eva Kushner Banks from</p> <p>4 Chitwood Harley Harnes on behalf of Lead Plaintiff.</p> <p>5 MR. HARNES: John Harnes from Chitwood</p> <p>6 Harley on behalf of Mississippi PERS.</p> <p>7 THE VIDEOGRAPHER: Thank you. Would you</p> <p>8 swear the witness, please.</p> <p>9 LORRIE SMITH TINGLE,</p> <p>10 having been administered an oath, was examined and</p> <p>11 testified as follows:</p> <p>12 THE VIDEOGRAPHER: Please proceed,</p> <p>13 Counsel.</p> <p>14 EXAMINATION</p> <p>15 BY MS. BRETAN:</p> <p>16 Q Good afternoon, Ms. Tingle. Could you</p> <p>17 state your full name for the record and address?</p> <p>18 A Yes, it's Lorrie Smith Tingle, 1919</p> <p>19 McRaven Road, Clinton, Mississippi.</p> <p>20 Q And, Ms. Tingle, I'm with Fenwick & West,</p> <p>21 and I'm counsel for Diamond Foods, who is a</p> <p>22 defendant in this action. My name is Jennifer</p> <p>23 Bretan.</p> <p>24 I wanted to ask you whether you had ever</p> <p>25 been deposed before. Have you?</p>	<p style="text-align: right;">11</p> <p>1 testifying here in connection with a lawsuit filed</p> <p>2 against Diamond Foods?</p> <p>3 A Yes, I do.</p> <p>4 Q And do you understand you're testifying as</p> <p>5 the person most knowledgeable with respect to</p> <p>6 certain topics?</p> <p>7 A Yes.</p> <p>8 Q And which topics are those in the notice</p> <p>9 of deposition, if you could identify them?</p> <p>10 A It would be two and possibly three and</p> <p>11 four and eight.</p> <p>12 Q What about topic one, the --</p> <p>13 A Oh, I'm sorry, yes.</p> <p>14 Q And topic one. And topic one asks for</p> <p>15 "The identities and duties of persons and entities</p> <p>16 with responsibility for determining, making or</p> <p>17 approving the investments by Lead Plaintiff during</p> <p>18 the period June 5th, 2010, to June 8, 2012"; is that</p> <p>19 right?</p> <p>20 A Yes.</p> <p>21 Q And are you the person most knowledgeable</p> <p>22 at PERS with respect to those investments?</p> <p>23 A Yes.</p> <p>24 Q Okay. At -- I just want to go through</p> <p>25 some general rules of depositions for the record.</p>
<p style="text-align: right;">10</p> <p>1 A Yes, I have.</p> <p>2 Q And how many times have you been deposed?</p> <p>3 A This should make the 12th time.</p> <p>4 Q What types of cases have you been deposed</p> <p>5 in?</p> <p>6 A Various securities litigation cases.</p> <p>7 Q And are those cases where PERS was a</p> <p>8 plaintiff?</p> <p>9 A Yes.</p> <p>10 Q And you mentioned securities litigation.</p> <p>11 Are those -- are those cases where you've been</p> <p>12 deposed cases where PERS was lead plaintiff?</p> <p>13 A In some cases lead plaintiff predominantly</p> <p>14 and then other cases co-lead plaintiff.</p> <p>15 Q Okay. I'm going to show you what's been</p> <p>16 marked as Exhibit 1.</p> <p>17 A Are they here?</p> <p>18 Q It's right in front of you there.</p> <p>19 A Okay.</p> <p>20 Q Yeah. Sorry. Okay. Exhibit 1 is a</p> <p>21 "Notice of Deposition of Lead Plaintiff Mississippi</p> <p>22 PERS Pursuant to Federal Rules of Civil Procedure</p> <p>23 26 and 30(b)(6)." This case is pending in the</p> <p>24 District Court for the Northern District of</p> <p>25 California. Ms. Tingle, do you understand you're</p>	<p style="text-align: right;">12</p> <p>1 You understand you're under oath today?</p> <p>2 A Yes.</p> <p>3 Q And that anything you say today, it's as</p> <p>4 if you were in court and you're testifying in front</p> <p>5 of a jury; do you understand that?</p> <p>6 A Yes, I do.</p> <p>7 Q Do you understand that you need to testify</p> <p>8 truthfully?</p> <p>9 A Yes.</p> <p>10 Q And the reporter is going to transcribe</p> <p>11 everything that's said today; do you understand</p> <p>12 that?</p> <p>13 A Yes, I do.</p> <p>14 Q If you don't understand one of my</p> <p>15 questions, please say so, okay?</p> <p>16 A I will.</p> <p>17 Q All right. Otherwise, I'm going to assume</p> <p>18 that you understood my question if you don't tell me</p> <p>19 otherwise. Do you understand that?</p> <p>20 A Yes.</p> <p>21 Q It's also important today for the</p> <p>22 deposition that you answer audibly. That means no</p> <p>23 sort of shaking of the head or nodding, but -- you</p> <p>24 know, so that the reporter can transcribe your</p> <p>25 answer. Do you understand that?</p>

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">13</p> <p>1 A Yes, I do.</p> <p>2 Q It's also important that we don't talk</p> <p>3 over each other. I'll do my best not to do that to</p> <p>4 you, and, similarly, if you let me finish a question</p> <p>5 before you answer, that would be best. Do you</p> <p>6 understand that?</p> <p>7 A Yes.</p> <p>8 Q Okay. Now, I'm -- today I'm entitled to</p> <p>9 your best recollection. I'm not asking for you to</p> <p>10 guess about things, but for your best recollection.</p> <p>11 If later on in the deposition you remember something</p> <p>12 or additional information that you think clarifies</p> <p>13 one of your answers, please just let me know that.</p> <p>14 A I will.</p> <p>15 Q Okay. If you think there are documents</p> <p>16 that would help you in your testimony today, please</p> <p>17 feel free to let me know that. We are able to take</p> <p>18 breaks today, but just not while a question is</p> <p>19 pending. So if I've asked you a question, that's</p> <p>20 not the time to take a break.</p> <p>21 A I understand.</p> <p>22 Q Are you represented here today?</p> <p>23 A Yes.</p> <p>24 Q So I understand your counsel from the</p> <p>25 Chitwood firm is here today.</p>	<p style="text-align: right;">15</p> <p>1 question.</p> <p>2 BY MS. BRETAN:</p> <p>3 Q Is there any reason you're not able to</p> <p>4 testify truthfully today?</p> <p>5 A No, there's not.</p> <p>6 Q Not on any medications?</p> <p>7 A No.</p> <p>8 Q Okay. Did you do anything to prepare for</p> <p>9 this deposition?</p> <p>10 A Met with counsel briefly last week.</p> <p>11 Q And how long did you meet with counsel?</p> <p>12 A Approximately an hour.</p> <p>13 Q And other than your counsel, did you speak</p> <p>14 with anybody about this deposition?</p> <p>15 A No.</p> <p>16 Q Did you review any documents in</p> <p>17 preparation for your deposition?</p> <p>18 A Yes. I looked over transactions that we</p> <p>19 supplied counsel and a list of the cases that I've</p> <p>20 given depositions for.</p> <p>21 Q Did any of those documents refresh your</p> <p>22 recollection regarding this matter?</p> <p>23 A The transactions helped me recall which</p> <p>24 managers were involved in this case.</p> <p>25 Q Okay. And so that was a list of</p>
<p style="text-align: right;">14</p> <p>1 A Correct.</p> <p>2 Q And if you -- do you understand that even</p> <p>3 if counsel objects, they're doing that to preserve</p> <p>4 their objection for the record; that doesn't mean</p> <p>5 you don't answer the question --</p> <p>6 A Yes.</p> <p>7 Q -- unless instructed not to answer?</p> <p>8 MR. HARNES: I'm going to object to that</p> <p>9 instruction. I will instruct the witness whether or</p> <p>10 not to answer the question.</p> <p>11 BY MS. BRETAN:</p> <p>12 Q Okay. And, most importantly, you need to</p> <p>13 answer my question. You may have feelings about</p> <p>14 some of the things we're going to discuss and</p> <p>15 certain points you want to make, and if you're</p> <p>16 called as a witness by your counsel, you'll have the</p> <p>17 opportunity to make those points, but the purpose of</p> <p>18 today's deposition is to allow me a chance to ask</p> <p>19 you some questions, and so it's important that you</p> <p>20 limit your answers to the questions I asked, okay?</p> <p>21 A All right.</p> <p>22 MR. HARNES: I'm going to object to that</p> <p>23 instruction as well to the suggestion that this</p> <p>24 witness should not answer -- give any facts that she</p> <p>25 feels necessary to give a complete answer to the</p>	<p style="text-align: right;">16</p> <p>1 transactions in Diamond Foods?</p> <p>2 A Yes.</p> <p>3 Q And have those -- if you know, do you know</p> <p>4 if those transactions have been produced -- those</p> <p>5 documents have been produced in this matter?</p> <p>6 A We submitted them to our counsel, and I</p> <p>7 don't know whether you've gotten a copy of buys and</p> <p>8 sells. I assume so.</p> <p>9 Q Did you talk about those documents with</p> <p>10 anyone other than your counsel?</p> <p>11 A No.</p> <p>12 Q Is there correspondence, emails, texts,</p> <p>13 messages, phone conversations with anyone about this</p> <p>14 deposition other than your counsel?</p> <p>15 A No.</p> <p>16 Q Have you been told to keep all of your</p> <p>17 documents related to this case?</p> <p>18 A Yes.</p> <p>19 Q And when were you told that?</p> <p>20 A We received a memo on February -- February</p> <p>21 of 2012. I don't know the exact date.</p> <p>22 Q And have you kept all of your documents</p> <p>23 related to this case?</p> <p>24 A Yes.</p> <p>25 Q All correspondence and email; have you</p>

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">17</p> <p>1 kept those?</p> <p>2 A Yes.</p> <p>3 Q Are there any documents you had that</p> <p>4 related to this case at one point, but no longer</p> <p>5 have?</p> <p>6 A Not to my knowledge.</p> <p>7 Q Okay. Just briefly, I'd like to go</p> <p>8 through your educational and professional</p> <p>9 background. Did you attend college?</p> <p>10 A Yes, I did.</p> <p>11 Q And where was that?</p> <p>12 A University of Alabama.</p> <p>13 Q And did you -- when did you graduate?</p> <p>14 A 1981.</p> <p>15 Q You received your degree?</p> <p>16 A Yes, I did.</p> <p>17 Q What kind of degree was that?</p> <p>18 A It was a bachelor of science.</p> <p>19 Q And what was the major or minor?</p> <p>20 A Geology.</p> <p>21 Q Do you have any graduate degrees?</p> <p>22 A I have a MBA from Mississippi College.</p> <p>23 Q And when did you get that?</p> <p>24 A 1994.</p> <p>25 Q Any professional degrees?</p>	<p style="text-align: right;">19</p> <p>1 agency.</p> <p>2 Q Do you have any direct reports?</p> <p>3 A Yes, I do.</p> <p>4 Q And who are they?</p> <p>5 A Elaine Kyzer is my administrative</p> <p>6 assistant, Charles Nielsen, George Dahduh, which is,</p> <p>7 D-a-h-d-u-h, and Jim Feazell, F-e-a-z-e-l-l.</p> <p>8 They're all portfolio managers responsible for a</p> <p>9 recite of different areas of the portfolio.</p> <p>10 Q And what are your responsibilities as</p> <p>11 chief investment officer for PERS?</p> <p>12 A I am responsible for oversight of the --</p> <p>13 and management of the investment portfolio for PERS</p> <p>14 and the other systems that are included under the</p> <p>15 PERS umbrella. So that basically is the -- the</p> <p>16 function that reports to the board with regards to</p> <p>17 any investment activities, to hiring and firing of</p> <p>18 our external managers, the asset allocation</p> <p>19 decisions, oversight of our -- any ancillary</p> <p>20 programs related to the investment program. We also</p> <p>21 oversee the investments for the deferred</p> <p>22 compensation plan.</p> <p>23 Q You said you started with PERS in June of</p> <p>24 1996, I believe?</p> <p>25 A Right.</p>
<p style="text-align: right;">18</p> <p>1 A I'm a Chartered Financial Analyst.</p> <p>2 Q And, Ms. Tingle, who do you -- for whom do</p> <p>3 you work currently?</p> <p>4 A The Public Employees' Retirement System of</p> <p>5 Mississippi.</p> <p>6 Q And how long have you been in that</p> <p>7 position?</p> <p>8 A How long have I worked for PERS? Since</p> <p>9 August 1991.</p> <p>10 Q And what's your current title?</p> <p>11 A Chief investment officer.</p> <p>12 Q And how long have you been chief</p> <p>13 investment officer?</p> <p>14 A Since June of 1996.</p> <p>15 Q And to whom do you report?</p> <p>16 A Pat Robertson, the executive director.</p> <p>17 Q And what are her responsibilities?</p> <p>18 A The executive director is responsible</p> <p>19 for -- basically she's the head of the agency; so</p> <p>20 she's responsible for all the activities of -- of</p> <p>21 the agency, which includes the benefit payments, the</p> <p>22 counseling of our participants in the retirement</p> <p>23 system, the investment program, the legal issues,</p> <p>24 every -- she's -- she's the head of the agency. So</p> <p>25 she's ultimately responsible for all actions of the</p>	<p style="text-align: right;">20</p> <p>1 Q And how long -- when did you become the</p> <p>2 chief investment officer?</p> <p>3 A That was in June of 1996. I started in</p> <p>4 August of 1991.</p> <p>5 Q Oh, sorry.</p> <p>6 A That's okay.</p> <p>7 Q June of '96, okay. And what was your role</p> <p>8 before you became chief investment officer?</p> <p>9 A I was a senior investment analyst. So it</p> <p>10 was a support position. Basically at that time the</p> <p>11 staff consisted of three people in the whole</p> <p>12 investment department. So my job principally was</p> <p>13 interacting with our external investment managers</p> <p>14 and overseeing their activities.</p> <p>15 Q And are you involved with the decisions of</p> <p>16 which investment managers to use?</p> <p>17 A Yes.</p> <p>18 Q Are you the primary contact with the</p> <p>19 investment managers?</p> <p>20 A I am the principal contact for PERS, yes;</p> <p>21 however, my -- the staff members that were mentioned</p> <p>22 earlier each have oversight responsibility for</p> <p>23 certain parts of the portfolio. So they do daily or</p> <p>24 quarterly interaction with the managers that they're</p> <p>25 responsible for.</p>

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">21</p> <p>1 Q What is PERS?</p> <p>2 A PERS is a defined benefit plan. It's a</p> <p>3 401A plan under the IRS regulations. So it is -- as</p> <p>4 a defined benefit plan, it provides retirement</p> <p>5 benefits for the participants that include state</p> <p>6 employees, the teachers, municipalities, cities and</p> <p>7 counties. So it's all the entities that are a part</p> <p>8 of our public -- any public employee for the state</p> <p>9 of Mississippi.</p> <p>10 Q Okay. Is that called a pension fund; is</p> <p>11 that --</p> <p>12 A Yes, it is.</p> <p>13 Q All right. And is there a board that</p> <p>14 oversees PERS?</p> <p>15 A Yes.</p> <p>16 Q And is that board elected or appointed?</p> <p>17 A It is a combination of both, actually.</p> <p>18 It's a ten-member board. Eight of the members are</p> <p>19 elected by various constituencies within the</p> <p>20 retirement system, participant groups. The state</p> <p>21 treasurer is an ex-officio member by virtue of that</p> <p>22 position, and then the governor has one appointee.</p> <p>23 Q How often does the board of PERS meet?</p> <p>24 A Their official board meetings are every</p> <p>25 other month.</p>	<p style="text-align: right;">23</p> <p>1 Q Does he attend the meetings?</p> <p>2 A No.</p> <p>3 Q Is the board of PERS responsible for</p> <p>4 setting the investment strategy?</p> <p>5 A Yes.</p> <p>6 Q And also responsible for oversight of</p> <p>7 PERS?</p> <p>8 A Yes.</p> <p>9 Q What is PERS' strategy for investments,</p> <p>10 broadly?</p> <p>11 A Broadly, yes, our -- our objective is to</p> <p>12 ensure that adequate assets are available to cover</p> <p>13 the liabilities, the benefit payments over time. So</p> <p>14 the primary objective -- that is the primary</p> <p>15 objective, is to ensure that assets are available to</p> <p>16 make -- to make sure that they cover all the benefit</p> <p>17 payments over time. So that really boils down to</p> <p>18 achieving a set rate of return that's projected into</p> <p>19 the future to meet our liabilities.</p> <p>20 Q And what's that rate of return?</p> <p>21 A 8 percent.</p> <p>22 Q So this strategy of PERS for investments</p> <p>23 is to achieve an 8 percent return on the investment?</p> <p>24 A It is to prudently and efficiently -- it</p> <p>25 is -- the trust fund dollars belong to the</p>
<p style="text-align: right;">22</p> <p>1 Q And do you attend those meetings?</p> <p>2 A Yes.</p> <p>3 Q Who else attends from PERS?</p> <p>4 A The executive director.</p> <p>5 Q Is that Ms. Robertson?</p> <p>6 A Yes, it is. All of the executive staff.</p> <p>7 So all the other division directors and heads of</p> <p>8 other departments and then the executive director's</p> <p>9 administrative assistant takes minutes. So she's</p> <p>10 there. Our attorney, in-house counsel, attends.</p> <p>11 Q And who is that?</p> <p>12 A Jane Mapp.</p> <p>13 Q And so Ms. Mapp is in-house counsel for</p> <p>14 PERS?</p> <p>15 A Correct.</p> <p>16 Q And so she works for PERS?</p> <p>17 A She is assigned to PERS. She actually</p> <p>18 works for the Attorney General's office, but she's</p> <p>19 assigned to PERS.</p> <p>20 Q And she usually attends the board</p> <p>21 meetings?</p> <p>22 A Yes, she does.</p> <p>23 Q Okay. What about Mr. Neville from the</p> <p>24 AG's office; do you know him?</p> <p>25 A I do know him.</p>	<p style="text-align: right;">24</p> <p>1 participants. So it's -- clearly as fiduciaries</p> <p>2 they have a duty to invest prudently, but the</p> <p>3 long-term goal -- the return objective is 8 percent.</p> <p>4 Q How does the board hear about investments</p> <p>5 by PERS? Does the board hear about investments by</p> <p>6 PERS?</p> <p>7 A They don't necessarily hear about</p> <p>8 individual -- individual securities. They focus</p> <p>9 much more on -- at a high level on asset classes.</p> <p>10 So they -- they are really much more interested in</p> <p>11 hearing about the outcome of the entire portfolio as</p> <p>12 opposed to really getting granular with the</p> <p>13 individual investments.</p> <p>14 Q Does the board make the specific</p> <p>15 investment decisions for PERS?</p> <p>16 A The board sets the asset allocation and</p> <p>17 the board hires and fires investment managers who</p> <p>18 are charged with managing parts of the portfolio</p> <p>19 that achieve that asset allocation.</p> <p>20 Q Does PERS do any of its own research</p> <p>21 concerning investments?</p> <p>22 A PERS does research on asset allocation</p> <p>23 decisions, not on individual securities, if that's</p> <p>24 your question.</p> <p>25 Q So PERS wasn't going out and researching</p>

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">25</p> <p>1 Diamond, for example?</p> <p>2 A That's correct.</p> <p>3 Q Who decided to make the investment in</p> <p>4 Diamond?</p> <p>5 A The individual portfolio -- or individual</p> <p>6 portfolio managers or teams for the various</p> <p>7 investment management firms that we've retained that</p> <p>8 actually invested in Diamond.</p> <p>9 Q So those are the investment managers?</p> <p>10 A Yes.</p> <p>11 Q And who was that investment -- if you</p> <p>12 know, who was the investment manager with respect to</p> <p>13 the transactions in Diamond stock?</p> <p>14 A To the best of my recollection, Wellington</p> <p>15 Management, Artisan Partners and Acadian, I believe.</p> <p>16 Q So Artisan Partners, for example, would</p> <p>17 have made the decision of whether to buy or sell</p> <p>18 Diamond stock?</p> <p>19 A That is correct.</p> <p>20 Q Do you understand that PERS is lead</p> <p>21 plaintiff in this case?</p> <p>22 A Yes.</p> <p>23 Q Do you know how it is that PERS became</p> <p>24 lead plaintiff in this case?</p> <p>25 A That decision was made by the state</p>	<p style="text-align: right;">27</p> <p>1 A It's the folks from Chitwood.</p> <p>2 Q Anyone else?</p> <p>3 A Not to my knowledge.</p> <p>4 Q Do you know what a monitoring agreement</p> <p>5 is?</p> <p>6 A I'm sorry?</p> <p>7 Q The monitoring agreement?</p> <p>8 A You'll have to give me more than that.</p> <p>9 That's lots of things.</p> <p>10 Q Are you aware that the Attorney General's</p> <p>11 office has monitoring agreements with law firms with</p> <p>12 respect to the securities held by PERS?</p> <p>13 A Yes.</p> <p>14 Q Do you know how many agreements the AG's</p> <p>15 office has, monitoring agreements?</p> <p>16 A 10 or 11.</p> <p>17 Q How do you know about the monitoring</p> <p>18 agreements?</p> <p>19 A We have confidentiality agreements with</p> <p>20 all of those firms because of the -- because they</p> <p>21 have access to our trading data.</p> <p>22 Q Do you know if the Attorney General's</p> <p>23 office has a monitoring agreement with the counsel</p> <p>24 -- the Chitwood firm in this action?</p> <p>25 A Yes, they do.</p>
<p style="text-align: right;">26</p> <p>1 Attorney General.</p> <p>2 Q So the AG brings suit on behalf of PERS?</p> <p>3 A That's correct.</p> <p>4 Q And is the AG -- so is the AG essentially</p> <p>5 acting as a fiduciary on behalf of PERS with respect</p> <p>6 to the suit?</p> <p>7 MR. HARNES: I'm going to object to this</p> <p>8 line of questioning. I don't think it's encompassed</p> <p>9 anywhere within the topics for which Ms. Tingle has</p> <p>10 been proffered, but I'm not going to tell her not to</p> <p>11 answer the question, but it's your -- it's your</p> <p>12 time.</p> <p>13 THE WITNESS: Can you repeat the question?</p> <p>14 BY MS. BRETAN:</p> <p>15 Q So is the AG acting essentially -- when it</p> <p>16 brings suit on behalf of PERS, is the AG acting in a</p> <p>17 fiduciary capacity with respect to PERS?</p> <p>18 A The Attorney General is acting as the</p> <p>19 legal representative for all state agencies in the</p> <p>20 capacity to make this decision. Whether or not he's</p> <p>21 acting as a fiduciary, I can't comment on.</p> <p>22 Q Do you know who the counsel are in this</p> <p>23 action?</p> <p>24 A Representing us or --</p> <p>25 Q (Nods head.)</p>	<p style="text-align: right;">28</p> <p>1 Q Is the information that is given to the</p> <p>2 monitoring firms public information or is it</p> <p>3 confidential?</p> <p>4 A The information that's given to them in</p> <p>5 what respect?</p> <p>6 Q Is the trading information -- is the</p> <p>7 trading information of PERS public information?</p> <p>8 A Yes.</p> <p>9 Q So it's available to anyone?</p> <p>10 A Upon request, yes.</p> <p>11 Q What kind of request would that be?</p> <p>12 A Our website has a public records request</p> <p>13 format or form and instructions, and you can request</p> <p>14 any information you want. That's a state law.</p> <p>15 Q Earlier you mentioned that there's a</p> <p>16 confidentiality agreement with the monitoring firms;</p> <p>17 is that correct?</p> <p>18 A Yes.</p> <p>19 Q So what is -- what's -- what's</p> <p>20 confidential -- what's being protected that's</p> <p>21 confidential, what information?</p> <p>22 A Any information that we -- that we give</p> <p>23 them, we would prefer that it only be used with</p> <p>24 respect to, I suppose, whatever the purpose that</p> <p>25 they're being retained is, rather than just -- just</p>

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">29</p> <p>1 making access to our information. As I said, 2 there's a formal process for requesting information. 3 The firms have ongoing access to our custodial bank 4 information. That's not something that we would 5 grant just anybody, that they could tap into our 6 ongoing realtime information. So -- so it's really 7 to facilitate their confidentiality of -- of any 8 information that we give them on a realtime basis. 9 Q You mentioned that there's a public 10 records request provision. 11 A Yes. 12 Q So -- so if someone came to Mississippi 13 PERS and asked for -- put in a request under that 14 provision for the trading records, how long, 15 approximately, would it take to get that 16 information? 17 A It depends on -- and the request -- the 18 law is fairly specific. If it's -- if you came and 19 asked for every trade for Apple stock and we don't 20 have an existing report that only includes that 21 information, then we might have to provide you 22 hundreds of pages of monthly reports or whatever. 23 So the Public Records Act has a 14-day window that 24 we have to meet -- or we have to supply information 25 that's requested through the official channels. We</p>	<p style="text-align: right;">31</p> <p>1 month end. 2 Q And the information available from the -- 3 what is the custodial bank? Sorry. What is the 4 custodial bank? 5 A That's okay. The custodial bank is the 6 bank that settles all of our trades and keeps our 7 accounting books. 8 Q And what is that bank? 9 A Bank of New York Mellon. 10 Q Okay. And is the information you've 11 talked about having access to at the custodial 12 bank -- is that the same information that the 13 monitoring firms -- the firms with monitoring 14 agreements get? 15 A Yes. 16 Q But that's not publicly available 17 information? 18 A That is correct. 19 Q Other than -- well, is it ever -- would 20 that information be available to anyone, that access 21 to the custodial bank through the public records 22 request? 23 A No. 24 (Exhibit 31 was marked for 25 identification by the court reporter.)</p>
<p style="text-align: right;">30</p> <p>1 would do our best to get you that information, but 2 if you -- if you ask for something that there wasn't 3 such a thing in existence that we'd have to 4 create -- we don't actually have to create reports. 5 We only have to give you information that's actually 6 in existence before the report. So if you said, "I 7 only want to see transactions on this stock," and 8 there isn't such a thing, we don't have to create 9 something, but we would have to send you every 10 manager report with Apple in it for whatever time 11 frame you're asking for. 12 Q Is there any -- is there any information 13 publicly available about PERS holdings on a given 14 day? Like, if I wanted to look today to find out 15 what are the holdings of that currently and 16 historically in PERS -- 17 A Yes. 18 Q -- would I be able to do that? 19 A No. You could ask for a month-end report 20 because that's the only time we actually get 21 hard-copy reports, is at month end. So if you asked 22 as of a month end, then we could supply you with 23 that information. We don't receive interim reports. 24 We have access to it online from our custodial bank, 25 but we don't actually receive physical copies until</p>	<p style="text-align: right;">32</p> <p>1 BY MS. BRETAN: 2 Q We've marked as Exhibit 31 a document 3 produced in this action Bates-labeled 3328 to, it 4 looks like, 3386. Do you recognize this document -- 5 A Yes. 6 Q -- Ms. Tingle? 7 A Excuse me. Yes. 8 Q And what is it? 9 A It is the standard operating procedures 10 manual for the investment department of PERS. 11 Q And if you turn to page 2, it says, "This 12 manual was revised August 2010"; is that right? 13 A That's what it says. 14 Q So I know produced to us in this -- I'll 15 represent to you that produced to us in this action 16 was another manual dated with a revision date of 17 November 2011. Do you know if there were interim 18 changes to the manual or is that the next revision? 19 A No, that would have been the next 20 revision. 21 Q Okay. And is this the manual that governs 22 PERS' investments? 23 A Yes. 24 Q Okay. And so this would have been the 25 operative manual with respect to investments up to</p>

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">33</p> <p>1 that next revision in November 2011; is that right?</p> <p>2 A That's correct.</p> <p>3 Q Okay. And then turning to page 4, it sets</p> <p>4 out PERS' investment division, and it says it's</p> <p>5 composed of a chief investment officer -- is that</p> <p>6 you?</p> <p>7 A Yes.</p> <p>8 Q -- and portfolio managers and</p> <p>9 administrative assistant; is that right?</p> <p>10 A Yes.</p> <p>11 Q And in the last sentence of that second</p> <p>12 paragraph there it says, "This position --" the</p> <p>13 chief -- it talks about chief investment officer</p> <p>14 duties and goes on to say, "This position oversees</p> <p>15 and is the primary contact at PERS for all external</p> <p>16 investment managers"; do you see that?</p> <p>17 A Yes.</p> <p>18 Q Is that correct?</p> <p>19 A Yes, it is.</p> <p>20 Q And so, for example, in -- with respect to</p> <p>21 Diamond, if Artisan Partners is the investment</p> <p>22 manager, you would have been the primary contact?</p> <p>23 A Yes.</p> <p>24 Q Okay. And turning to page 13, page 13</p> <p>25 sets out equity investment policies. Is this --</p>	<p style="text-align: right;">35</p> <p>1 A Right.</p> <p>2 Q And what's that?</p> <p>3 A That is the income that is paid out by</p> <p>4 companies in the form of dividends.</p> <p>5 Q So is the gain on effectively the -- the</p> <p>6 return on the investment as both the stock --</p> <p>7 A If a --</p> <p>8 Q -- appreciation and the dividend?</p> <p>9 A That is correct.</p> <p>10 Q Okay. Turning to page -- sorry -- 26.</p> <p>11 This is a proxy voting policy. So if I'm reading</p> <p>12 this right -- you can tell me -- so does the board</p> <p>13 -- PERS give out -- hand over voting on proxies to</p> <p>14 its investment managers?</p> <p>15 A Yes.</p> <p>16 Q And -- and so the decisions related to</p> <p>17 voting those proxies, it's just in the investment</p> <p>18 manager's discretion?</p> <p>19 A That is correct.</p> <p>20 Q Okay. Okay. On page 27 this reads, "The</p> <p>21 review of outside investment managers." So is this</p> <p>22 -- and it has a list of what looks like -- well, why</p> <p>23 don't you tell me. What are -- what is reflected</p> <p>24 here on page 27?</p> <p>25 A It's an outline of basically the -- the</p>
<p style="text-align: right;">34</p> <p>1 these are the policies that would apply to something</p> <p>2 like buying shares of Diamond; is that right?</p> <p>3 A Yes.</p> <p>4 Q Okay. And the final sentence there, it</p> <p>5 says, "Equity investments shall be made with a view</p> <p>6 towards achieving a total rate of return, market</p> <p>7 appreciation, plus dividend income higher than</p> <p>8 obtainable in fixed-income investments"; is that</p> <p>9 correct?</p> <p>10 A Yes.</p> <p>11 Q And is that -- when we were talking</p> <p>12 earlier about the 8 percent, is that -- is that what</p> <p>13 this is, this relates to?</p> <p>14 A Yeah, to some degree. I mean, if you're</p> <p>15 -- you're taking more risk with equity investments</p> <p>16 than you are theoretically with fixed-income</p> <p>17 investments. So the -- the expectation is that you</p> <p>18 would -- there would be greater return for the</p> <p>19 additional risk taken.</p> <p>20 Q Okay. And when it says the "Total rate of</p> <p>21 return" here in parentheses, it talks about market</p> <p>22 appreciation. What's that?</p> <p>23 A That is a stock going up.</p> <p>24 Q Okay. And it says, "Plus Dividend</p> <p>25 Income."</p>	<p style="text-align: right;">36</p> <p>1 procedures that are used by my staff as far as</p> <p>2 monitoring their assigned investment managers, and</p> <p>3 we -- staff receives copies of trades from most of</p> <p>4 the managers, not all, but most of the managers on a</p> <p>5 daily basis at the end of the day after all trading</p> <p>6 has been completed, and they're looking at those</p> <p>7 trades to make sure that investment guidelines have</p> <p>8 not been breached.</p> <p>9 The guidelines are based on the statutes</p> <p>10 or the policies that have been set for each</p> <p>11 individual managers. So it's a very high-level</p> <p>12 review of the daily trading activity. The month-end</p> <p>13 statements and -- of holdings and transactions are</p> <p>14 reviewed both by my investment staff and by the</p> <p>15 investment accountants. Again, it's for compliance</p> <p>16 purposes. It's to really know what's happening in</p> <p>17 the -- within the portfolios, changes that managers</p> <p>18 are making, not so much with individual names, but</p> <p>19 more with sector exposure and the ways that they are</p> <p>20 positioning the portfolios. The quarterly reports</p> <p>21 are produced -- in this case, Mercer Investments,</p> <p>22 our former consultants, they provide quarterly</p> <p>23 performance reports for the -- each individual</p> <p>24 portfolio within the PERS -- the larger PERS</p> <p>25 portfolio and then at the total portfolio level.</p>

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">37</p> <p>1 So staff is responsible for keeping up 2 with the performance of their individual managers. 3 They are -- they have quarterly conference calls 4 with the portfolio teams to get an update on any 5 strategy changes or repositioning of the portfolio 6 that might have taken place or that's anticipated to 7 take place going forward. We receive monthly 8 compliance reports from our custodial bank. They've 9 downloaded all the investment guidelines that are 10 included in the investment management agreement. So 11 any violations are -- the reports are produced and 12 staff is responsible for monitoring that, and let's 13 see -- 14 Q And then there are annual reports by the 15 investment managers? 16 A Yes, the -- each manager comes in to 17 report to the board -- the investment committee of 18 the board once a year with the exception of the -- 19 the index fund managers, and we don't bring those 20 in. 21 Q Okay. So when you -- when your staff or 22 you look at -- do you look at the daily transactions 23 as -- typically? 24 A I don't, but my staff does. 25 Q But those are executed transactions that</p>	<p style="text-align: right;">39</p> <p>1 management of the portfolio leaves, occasionally if 2 there is a change of ownership of the firm, that 3 could cause a manager to put it on a watch list, if 4 there's some sort of litigation going on with the 5 firm that might really pull the portfolio team away 6 from their -- their main duties to us of managing 7 the portfolio or if there is some sort of conflict 8 of interest or something that's not disclosed to us, 9 that could result in a firm being put on a watch 10 list or terminated. Out of that group, the primary 11 one that we -- we see most often is if there's a 12 turnover on the portfolio team, we will put a firm 13 on watch until the situation -- we have enough 14 evidence that it's not going to have an impact on 15 performance going forward. 16 There are some other measures. Each 17 manager is charged with outperforming both an index 18 that they're assigned as well as a peer group of 19 other funds that are managing the same type 20 strategy. If a portfolio underperforms either or 21 both of those for a -- it's a -- it's kind of 22 complicated. It's four consecutive rolling 23 three-year periods. Then they're automatically put 24 on a watch list, and this was -- this is the 25 procedure that the board uses to formally notify</p>
<p style="text-align: right;">38</p> <p>1 they're looking at? 2 A That's correct, yes. 3 Q And so the investment manager is charged, 4 effectively, with making those decisions to buy or 5 sell or they have the discretion to do that? 6 A That is correct. 7 Q Okay. Just turning the page, page 28 is a 8 watch list or termination guidelines. So what 9 factors would -- in my understanding of this -- tell 10 me if -- you can correct me -- that this is sort of 11 a set of factors for putting investment managers who 12 aren't performing on sort of notice or something 13 like that? 14 A (Witness nods head.) 15 Q So what are the factors that would place 16 an investment manager on -- on a watch list for 17 PERS? 18 MR. HARNES: Object to the form of the 19 question except for the last sentence. 20 THE WITNESS: Well, there are a couple of 21 factors, and -- well, actually, there are several. 22 They're bulleted here. If there's a violation of 23 the investment guidelines, if a manager is changing 24 their -- their investment strategy, investment 25 style, if a key person in the portfolio -- in the</p>	<p style="text-align: right;">40</p> <p>1 managers that "There is displeasure with your 2 performance" and that there could be subsequent 3 action taken. 4 BY MS. BRETAN: 5 Q So -- so with respect to -- I guess what's 6 written here is quantitative factors. There's an 7 expectation that there should be out-performance of 8 an index; is that -- 9 A That is correct. 10 Q Okay. What -- by how much? Does it vary 11 for each investment manager? 12 A It does. It's generally -- and it's in -- 13 it's all of this with 99 percent of our managers is 14 captured in their investment management agreement in 15 one of the exhibits, but generally it's anywhere -- 16 and it does vary with strategy, fixed-income 17 managers. It's generally 50 to 75 basis points over 18 an index. Other equity managers, it could be 19 anywhere from 100 to 300 basis points over an index. 20 Q And what does that mean, being over by a 21 100? 22 A Outperforming -- outperforming by 1 to 23 3 percent of a -- of an index fund. So we're paying 24 them to actively manage the portfolio, and they 25 should outperform by that much.</p>

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">41</p> <p>1 Q Just jumping up to the back -- the top of</p> <p>2 the list, you mentioned that the final bullet point</p> <p>3 under the qualitative factors has to do with failing</p> <p>4 -- conflicts of interest, right?</p> <p>5 A Uh-huh.</p> <p>6 Q So what -- what kind of information is it</p> <p>7 that needs to be disclosed with respect to potential</p> <p>8 conflicts of interest?</p> <p>9 A You know, I don't know that we've ever had</p> <p>10 anything that would fall into that category. I</p> <p>11 suppose if there were some instance where ... I</p> <p>12 don't know. I can't think of an example at the</p> <p>13 moment. But if a -- if an investment manager was on</p> <p>14 a board of a company or their spouse was on the</p> <p>15 board of a company and they're -- suddenly we're a</p> <p>16 big investor of that company, that could potentially</p> <p>17 be a concern for us. We've never had an instance of</p> <p>18 this, but that's just the first thought that comes</p> <p>19 to mind.</p> <p>20 Q The -- I think in ... We'll just go on.</p> <p>21 Why don't you just, if you don't mind,</p> <p>22 take a look at Exhibit -- what's been marked as</p> <p>23 Exhibit 4. It should be right in front of you</p> <p>24 there. Exhibit 4 was a declaration submitted in</p> <p>25 support of the motion by PERS to be appointed lead</p>	<p style="text-align: right;">43</p> <p>1 custodial bank; is that right?</p> <p>2 A Yes.</p> <p>3 Q And then turning to Exhibit B, there's a</p> <p>4 -- what looks to be a loss calculation for Diamond</p> <p>5 Foods; do you see that?</p> <p>6 A Yes.</p> <p>7 Q Are you familiar with this document?</p> <p>8 A No.</p> <p>9 Q Did -- you didn't help prepare this</p> <p>10 document?</p> <p>11 A No.</p> <p>12 Q Do you happen to know, Ms. Tingle, if</p> <p>13 there were dividends associated with the investment</p> <p>14 in Diamond Foods by PERS?</p> <p>15 A I don't know.</p> <p>16 Q You don't know. If there were dividends</p> <p>17 associated with the investment by Diamond Foods,</p> <p>18 would that be part of a gain on the investment?</p> <p>19 A That would be income. It wouldn't be</p> <p>20 investment gain or loss.</p> <p>21 Q So earlier we were talking about the -- in</p> <p>22 Exhibit 31 that equity investments are made with a</p> <p>23 view towards achieving a total rate of return --</p> <p>24 A Yes.</p> <p>25 Q -- based on market appreciation plus</p>
<p style="text-align: right;">42</p> <p>1 plaintiff; do you see that?</p> <p>2 A Yes.</p> <p>3 Q And attached to -- to the declaration as</p> <p>4 Exhibit A was a certification from Mr. Neville; do</p> <p>5 you see that?</p> <p>6 A Yes.</p> <p>7 Q Are you familiar with this document?</p> <p>8 A No.</p> <p>9 Q Have you seen it before?</p> <p>10 A No.</p> <p>11 Q Mr. Neville's certification attaches a</p> <p>12 schedule A, if you turn a couple pages there; do you</p> <p>13 see that?</p> <p>14 A Yes.</p> <p>15 Q Are you familiar with this schedule A?</p> <p>16 A No.</p> <p>17 Q Do you know where Mr. Neville would have</p> <p>18 gotten this information?</p> <p>19 A We supplied the buy and sell information</p> <p>20 to Chitwood -- the Chitwood firm; so I don't know</p> <p>21 where Mr. Neville got it, but I would assume he got</p> <p>22 it from the Chitwood firm.</p> <p>23 Q And I think you said earlier that Chitwood</p> <p>24 was the monitoring firm; so they would have had</p> <p>25 access to that buy and sell information through the</p>	<p style="text-align: right;">44</p> <p>1 dividend income.</p> <p>2 A Yes.</p> <p>3 Q So in terms of the return on the</p> <p>4 investment, that's both the stock appreciation and</p> <p>5 the dividend?</p> <p>6 A Yes.</p> <p>7 Q But that's different --</p> <p>8 A For total return, yes.</p> <p>9 Q Okay. Is that different than a gain on</p> <p>10 the investment?</p> <p>11 A From an accounting perspective. That's --</p> <p>12 that's an accounting perspective, and the</p> <p>13 performance calculation is not necessarily the same</p> <p>14 as an accounting categorization. Income and --</p> <p>15 investment gains and losses and income together make</p> <p>16 the performance -- the total return, the return</p> <p>17 calculation.</p> <p>18 Q Okay. Should -- if you're calculating</p> <p>19 losses on the investment by -- in Diamond Foods by</p> <p>20 PERS, would you include the income that had been</p> <p>21 received in dividends?</p> <p>22 A Normally we would not, but I don't -- the</p> <p>23 calculations that are done for cases like this are</p> <p>24 beyond my -- my role in this; so I don't have</p> <p>25 anything to do with how this is calculated.</p>

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">45</p> <p>1 MS. BRETAN: Okay. Let's go to 2 Exhibit 32. 3 (Exhibit 32 was marked for 4 identification by the court reporter.) 5 BY MS. BRETAN: 6 Q Exhibit 32 is Bates-labeled 9 -- MSPERS 7 9182 and appears to be security transactions from 8 January 31st, 2009, to June 30th, 2012, related to 9 Artisan Partners; is that right? 10 A Yes. 11 Q Are you familiar with this document? 12 A Actually, it's the first time I've seen 13 it, but I'm familiar with the format. 14 Q Do you know what the class period is in 15 this case? 16 A Not right offhand. 17 Q I'll represent to you that the class 18 period is October 5th, 2010, through February 8th, 19 2012, as set out in the consolidated complaint. Are 20 all the transactions listed here by PERS in Diamond 21 stock in that period? 22 A Are you asking me are these all the 23 transactions? 24 Q No. I'm saying: Are all the transactions 25 in Diamond by PERS listed here in that period that</p>	<p style="text-align: right;">47</p> <p>1 of the market; would that be one of the factors? 2 A Consistent out-performance of the mid-cap 3 growth index, yes. 4 Q Okay. And part of what PERS would have 5 looked at in selecting Artisan, would that have been 6 Artisan's strategy for making investments? 7 A Yes. 8 Q If you look at the transactions listed 9 here on Exhibit -- sorry -- 32, it looks like on the 10 left-hand side there there are some buys and -- B -- 11 codes B and S. And are those buys and sells, to 12 your knowledge? 13 A Yes. 14 Q Okay. And so looking at the first string 15 of buys, I guess, are June 3rd, 2011, to about -- 16 let's go up to August 19th, 2011. Do you know what 17 Artisan would have been relying on -- what 18 information they would have been relying on in 19 making those trades -- purchases? 20 A I do not. 21 Q And continuing on, it looks like there are 22 a couple of purchases in September of 2011, 23 September 27th and 28th of 2011. Do you know what 24 Artisan would have been relying on in making those 25 purchases, what information?</p>
<p style="text-align: right;">46</p> <p>1 we just discussed? 2 A Yes, they should be. 3 Q All right. And up at the top it says 4 "Artisan Partners"; do you see that? 5 A Yes. 6 Q Is that because Artisan Partners would 7 have been the investment manager responsible for all 8 of these transactions? 9 A Yes. 10 Q Okay. How did Artisan become an 11 investment manager for PERS? 12 A Artisan manages a mid-cap growth 13 portfolio; so they were selected from a group of 14 three candidates that were brought to the board of 15 trustees for consideration for this mandate. 16 Q And what are the guidelines that were used 17 in selecting Artisan? 18 A Our typical -- well, we -- are you asking 19 about the process that's used? 20 Q Well, let me ask you this: Is historical 21 performance by Artisan Partners part of the -- one 22 of the factors that would lead PERS to contract with 23 Artisan as an investment manager? 24 A Yes, that is one of the factors. 25 Q And what about consistent out-performance</p>	<p style="text-align: right;">48</p> <p>1 A No. 2 Q Okay. And it looks like Artisan sold on 3 September 30th; do you see that, 2011? 4 A Yes. 5 Q Do you know what they would have been 6 relying on in selling on that date? 7 A Artisan had -- when they came in for their 8 annual presentation to the board, there was -- there 9 was a statement in their presentation to the board 10 that there had been some -- some issues with the 11 financial statements for Diamond Foods. So they 12 moved out of the position. 13 Q And when was that annual presentation? 14 A I'm sorry. It was in 2011, but I don't 15 know when. 16 Q Are they generally the same period every 17 year? 18 A It's the same -- yeah, but we've switched 19 because as we've added additional managers, we've 20 had to move things around -- move different groups 21 around because we only have six meetings a year. So 22 I don't know exactly the month. 23 Q Would that presentation have been after 24 these -- this trade, though? 25 A Yes, I believe it would be.</p>

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">49</p> <p>1 Q So you don't know specifically what</p> <p>2 Artisan would have been -- Artisan Partners would</p> <p>3 have been relying on in selling on September 30th?</p> <p>4 A I do not.</p> <p>5 Q Okay. What about -- there are a series of</p> <p>6 three buys right after that on October 6th, 2011,</p> <p>7 18th and 21st of October 2011; do you see that?</p> <p>8 A I do.</p> <p>9 Q Do you know what Artisan would have been</p> <p>10 relying on when they made those purchases?</p> <p>11 A I do not.</p> <p>12 Q Okay. And then continuing on, it looks</p> <p>13 like from November 11th through November 16th,</p> <p>14 2011 -- it looks like Artisan sells all of its</p> <p>15 holdings in Diamond; is that correct?</p> <p>16 A Yes.</p> <p>17 Q And do you know what they would have been</p> <p>18 relying on in making those sales?</p> <p>19 A I do not.</p> <p>20 MS. BRETAN: Okay. Let's go to</p> <p>21 Exhibit 33.</p> <p>22 (Exhibit 33 was marked for</p> <p>23 identification by the court reporter.)</p> <p>24 BY MS. BRETAN:</p> <p>25 Q Do you recognize this document?</p>	<p style="text-align: right;">51</p> <p>1 case, is 200 basis point net of fees over their</p> <p>2 index and then the level of risk that we measure by</p> <p>3 standard deviation which is acceptable in order to</p> <p>4 achieve that return.</p> <p>5 Q And provision A there says, "Consistent</p> <p>6 above median performance."</p> <p>7 A Oh, I'm sorry.</p> <p>8 Q That's okay. What does that mean?</p> <p>9 A As I mentioned earlier in the discussion,</p> <p>10 when we talked about the watch list, each manager</p> <p>11 has a peer group, a group of like managers in our --</p> <p>12 that our investment consultant maintains a universe</p> <p>13 of information on, and so they are expected to be</p> <p>14 above median.</p> <p>15 Q So above the middle of the pack --</p> <p>16 A Yes.</p> <p>17 Q -- of their peers; is that right?</p> <p>18 A Yes.</p> <p>19 Q And part B is about exceeding the Russell</p> <p>20 mid-cap growth index by 200 basis points. So that's</p> <p>21 2 percent --</p> <p>22 A Correct.</p> <p>23 Q -- above?</p> <p>24 Okay. Are you happy with Artisan's</p> <p>25 performance on behalf of PERS?</p>
<p style="text-align: right;">50</p> <p>1 A I do.</p> <p>2 Q And what is it?</p> <p>3 A It's the investment management agreement</p> <p>4 between PERS of Mississippi and Artisan Partners.</p> <p>5 Q And is this the operative agreement that</p> <p>6 governs the relationship between PERS and Artisan</p> <p>7 right now?</p> <p>8 A Yes.</p> <p>9 Q And it looks like it was entered on</p> <p>10 September 11th, 2002. You were at PERS at the time</p> <p>11 of -- of this agreement?</p> <p>12 A Yes.</p> <p>13 Q And were you involved with entering into</p> <p>14 this agreement with Artisan?</p> <p>15 A Yes.</p> <p>16 Q Okay. Turning to page 6, which is</p> <p>17 addendum one to the agreement, can you tell me what</p> <p>18 this addendum is?</p> <p>19 A Yes, this outlines the performance</p> <p>20 expectations that we establish with all of our</p> <p>21 managers, and in this case it's between -- it's the</p> <p>22 performance expectations set forth for Artisan. So</p> <p>23 it basically captures what we'll be measured --</p> <p>24 measuring them against, which index, what the</p> <p>25 expectation is for their performance, which, in this</p>	<p style="text-align: right;">52</p> <p>1 A Yes.</p> <p>2 Q Have they beat the market pretty</p> <p>3 consistently?</p> <p>4 A They have.</p> <p>5 Q And how is it that Artisan is able to do</p> <p>6 that, achieve those results?</p> <p>7 A They do a very good job of stock selection</p> <p>8 and rotating sectors within the mid-cap space, and</p> <p>9 they are very good at getting in and getting out of</p> <p>10 stocks at the right time.</p> <p>11 Q And turning to the back of Exhibit 33, it</p> <p>12 looks like a letter to you dated May 29th, 2007; do</p> <p>13 you see that?</p> <p>14 A Yes.</p> <p>15 Q Is this part of the agreement with</p> <p>16 Artisan?</p> <p>17 A It's not part of the agreement, but it's</p> <p>18 in the contract file because it's -- it actually is</p> <p>19 a document that's a change or request for a change</p> <p>20 that was made.</p> <p>21 Q In the second-to-last paragraph of the</p> <p>22 letter the first sentence notes that "At Artisan we</p> <p>23 are keenly focused on providing the most value</p> <p>24 possible for our clients over the long term"; do you</p> <p>25 see that?</p>

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">53</p> <p>1 A Yes.</p> <p>2 Q Is that part of -- that value, is that</p> <p>3 part of what Artisan provides to PERS, investments</p> <p>4 that provide value?</p> <p>5 A They -- yes. What -- what they -- my</p> <p>6 understanding of this sentence or interpretation of</p> <p>7 this sentence would be that for what they are paid,</p> <p>8 they will provide us or they strive to provide us</p> <p>9 with the performance that meets the expectations</p> <p>10 that we've set for them.</p> <p>11 Q Okay. And then turning back a page, the</p> <p>12 last paragraph there, it says -- we'll leave it.</p> <p>13 So I'm going to mark as Exhibit 34 a</p> <p>14 document Bates-labeled MSPERS 12270 through 12273.</p> <p>15 (Exhibit 34 was marked for</p> <p>16 identification by the court reporter.)</p> <p>17 BY MS. BRETAN:</p> <p>18 Q Ms. Tingle, do you recognize this</p> <p>19 document?</p> <p>20 A Yes.</p> <p>21 Q What is it?</p> <p>22 A This is a document that my staff produces</p> <p>23 for -- we do -- when managers come in to make their</p> <p>24 annual presentations before our board, they come in</p> <p>25 -- we usually try to bring all of the mid-cap and</p>	<p style="text-align: right;">55</p> <p>1 bottom up and there's top down, and top down is</p> <p>2 generally looking at various sectors within the</p> <p>3 equity market, telecoms, financials, industrials,</p> <p>4 that sort of thing. So bottom-up research is more</p> <p>5 individual stock, individual company research as</p> <p>6 opposed to high-level -- deciding we're going to</p> <p>7 have -- we're going to overweigh our telecom</p> <p>8 exposure.</p> <p>9 Q So is that bottom-up research -- that's</p> <p>10 research that Artisan Partners would be doing?</p> <p>11 A That is correct.</p> <p>12 Q And that's research that would let them</p> <p>13 identify investments where there were reasonable</p> <p>14 valuations?</p> <p>15 A Based on their research, yes.</p> <p>16 Q What's a reasonable valuation?</p> <p>17 A Artisan is -- seeks to not pay more than</p> <p>18 their research shows that a company is worth.</p> <p>19 Q So is one of the things that PERS looks to</p> <p>20 Artisan to do to ferret out or search out</p> <p>21 investments that will have value, essentially, that</p> <p>22 are undervalued in some way?</p> <p>23 A To -- to some extent. Artisan is not a --</p> <p>24 what's called a value manager. They are looking for</p> <p>25 companies that are -- there are two types of</p>
<p style="text-align: right;">54</p> <p>1 small-cap managers in at one time. So staff</p> <p>2 provides an overview of each firm, basically, to</p> <p>3 remind our board members who's coming in, what it is</p> <p>4 they do for us, and so this is really just a summary</p> <p>5 that was provided in -- my guess would be that this</p> <p>6 was for our December 10th, 2010, investment</p> <p>7 committee meeting, and this was the staff</p> <p>8 introduction section that was provided for Artisan</p> <p>9 Partners.</p> <p>10 Q Are these key comments by your staff or</p> <p>11 are they comments taken from Artisan's information?</p> <p>12 A It's probably a combination. Staff</p> <p>13 actually puts this together, but they do -- they do</p> <p>14 pull information from the quarterly reports or from</p> <p>15 information that Artisan provides them.</p> <p>16 Q In the first key comment it says that "The</p> <p>17 team, led by Andrew Stephens, seeks to build a</p> <p>18 portfolio of mid-cap companies with accelerated</p> <p>19 earnings and reasonable valuations and hopes to</p> <p>20 identify these companies through bottom-up</p> <p>21 research"; do you see that?</p> <p>22 A Yes.</p> <p>23 Q What is bottom-up research?</p> <p>24 A Bottom-up research is doing actual</p> <p>25 company-focused research as opposed to -- there's</p>	<p style="text-align: right;">56</p> <p>1 investments. Value investments are mispriced by the</p> <p>2 market. They're inexpensive, and you're hoping that</p> <p>3 at some point the market recognizes that value and</p> <p>4 those -- and a price is -- a reasonable price is</p> <p>5 realized. Growth companies really are focused more</p> <p>6 on growing the business. So your appreciation comes</p> <p>7 from -- not from the market necessarily recognizing</p> <p>8 something that's undervalued, but for the company</p> <p>9 expanding, the company continuing to build on itself</p> <p>10 and to grow, and the market recognizes that along</p> <p>11 the way.</p> <p>12 Artisan is a growth -- a growth manager.</p> <p>13 They do -- they are sensitive, though, to</p> <p>14 valuations; so they will -- they prefer not to pay</p> <p>15 more than they think is a reasonable price for that</p> <p>16 potential growth.</p> <p>17 Q And that's based on the research that they</p> <p>18 do with respect to the individual companies?</p> <p>19 A Yes.</p> <p>20 Q In looking at -- at Exhibit 34, do you --</p> <p>21 can you tell me if you -- how much of MPERS' assets</p> <p>22 are invested with Artisan?</p> <p>23 A How much are invested right now or --</p> <p>24 Q At the time of this document?</p> <p>25 A -- at this time?</p>

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">57</p> <p>1 Q Yeah.</p> <p>2 A 2010. The mid-cap portfolios are</p> <p>3 generally about -- about 7 percent of the total</p> <p>4 equity. Equity -- I would say probably maybe a</p> <p>5 couple of percent of the whole portfolio. Maybe</p> <p>6 1 percent or less.</p> <p>7 Q In rough numbers how much, ballpark?</p> <p>8 A The total portfolio in 2010 was</p> <p>9 19 billion; so they were managing 730 million at the</p> <p>10 time. So --</p> <p>11 Q Oh, for MPERS?</p> <p>12 A Yes, for MPERS.</p> <p>13 Q I see. Okay. And then just turning back</p> <p>14 to the agreement with Artisan, which is Exhibit 33,</p> <p>15 do you have that?</p> <p>16 A Uh-huh.</p> <p>17 Q So addendum two to that agreement, which</p> <p>18 is Bates -- there was a Bates number at the bottom</p> <p>19 there, 3323.</p> <p>20 A Right.</p> <p>21 Q Do you see that?</p> <p>22 A Right.</p> <p>23 Q And it notes there are a number of --</p> <p>24 47 percent on all assets. Is that the fee that</p> <p>25 Artisan receives with respect to that 700 --</p>	<p style="text-align: right;">59</p> <p>1 fees --</p> <p>2 A Yes.</p> <p>3 Q -- to Artisan?</p> <p>4 A Yes.</p> <p>5 MS. BRETAN: Let's go to Exhibit 35.</p> <p>6 (Exhibit 35 was marked for</p> <p>7 identification by the court reporter.)</p> <p>8 BY MS. BRETAN:</p> <p>9 Q Do you recognize this document,</p> <p>10 Ms. Tingle?</p> <p>11 A Yes.</p> <p>12 Q What is it?</p> <p>13 A This is Artisan's 2011 ADV form.</p> <p>14 Q What is that, "ADV form"?</p> <p>15 A It is a disclosure that's made by</p> <p>16 registered investment firms to the SEC.</p> <p>17 Q Then turning to, oh, what's Bates-labeled</p> <p>18 10237 on the bottom, it says page 20, but I think</p> <p>19 there are more than 20 pages ahead of it.</p> <p>20 A Yeah.</p> <p>21 Q We'll see what -- I'm guessing if you</p> <p>22 start at 10218, it looks like there's a brochure</p> <p>23 from Artisan Partners Limited Partnership; do you</p> <p>24 see that? 10218.</p> <p>25 A Yes.</p>
<p style="text-align: right;">58</p> <p>1 A Yes.</p> <p>2 Q -- okay -- \$730 million?</p> <p>3 A Yes.</p> <p>4 Q And is that an annual fee?</p> <p>5 A Yes.</p> <p>6 Q So they get 40 -- .47 percent of whatever</p> <p>7 the annual --</p> <p>8 A Yes.</p> <p>9 Q Okay. And so that's a -- is that a -- is</p> <p>10 that a fee number consistent or are there investment</p> <p>11 managers that have better fees, lower fees? How</p> <p>12 does that work?</p> <p>13 A We are pretty fee sensitive. So this</p> <p>14 would not be -- we occasionally will hire a manager</p> <p>15 who has higher fees than the median in this group,</p> <p>16 but it's a pretty rare occurrence. So Artisan -- my</p> <p>17 recollection is Artisan is probably -- that's</p> <p>18 probably middle of the pack. Our overall fees are</p> <p>19 consistently lower than our peer group. So my guess</p> <p>20 is this is -- this is an average fee for this sort</p> <p>21 of mandate.</p> <p>22 Q But it's about -- I'm terrible at math,</p> <p>23 but ballparking --</p> <p>24 A That's okay.</p> <p>25 Q -- so it's a few million dollars a year in</p>	<p style="text-align: right;">60</p> <p>1 Q And that's dated March 18th, 2011?</p> <p>2 A Yes.</p> <p>3 Q So what is -- what is this part of the</p> <p>4 ADV?</p> <p>5 A It's another part of the -- the filing</p> <p>6 that is done for the SEC.</p> <p>7 Q Okay. Now, turning to page 20 of that</p> <p>8 document --</p> <p>9 A Okay.</p> <p>10 Q -- Bates 10237, down at the bottom there</p> <p>11 it talks about U.S. mid-cap growth strategy; do you</p> <p>12 see that?</p> <p>13 A Yes.</p> <p>14 Q Okay. And is this an overview of what --</p> <p>15 what -- what's set out here in this U.S. mid-cap</p> <p>16 growth strategy section, from your understanding?</p> <p>17 Is this what -- let me rephrase.</p> <p>18 Is this basically an overview of what --</p> <p>19 what Artisan offers?</p> <p>20 A Yes.</p> <p>21 Q And turning to the next page, 10238, one</p> <p>22 of the -- one of the things listed under "Security</p> <p>23 Selection" is "Attractive Valuations"; do you see</p> <p>24 that?</p> <p>25 A Yes.</p>

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">61</p> <p>1 Q It goes on to say that "Through its own 2 fundamental research, Artisan estimates the amount a 3 buyer would pay to buy the entire company, the 4 company's intrinsic value or private market value 5 and considers whether to purchase a stock if it 6 sells at a discount to that estimate"; do you see 7 that? 8 A Yes. 9 Q Is the fundamental research referred -- 10 referenced here that sort of bottoms-up research 11 that we talked about earlier? 12 A Yes. 13 Q And in terms of the private market value, 14 what is that, your understanding? 15 A My understanding is that is what a company 16 would sell for if it was being sold in its entirety 17 or if it was being purchased in its entirety. 18 Q And that's an estimate Artisan makes based 19 on its research? 20 A Yes. 21 Q Okay. Is -- and then is -- it looks like 22 what they say here is that they consider whether to 23 make a purchase based on whether the -- the stock is 24 trading at a discount to that sort of estimated 25 value.</p>	<p style="text-align: right;">63</p> <p>1 Q And so that attractive valuation, is that 2 -- is that, you know, things that are selling at a 3 discount to that private market value estimate that 4 -- that we talked about earlier? 5 A That would be my understanding, yes. 6 Q And turning to page 35, the first full 7 paragraph there -- I think it's Bates-labeled 8 10252 -- it says that "Artisan tries to identify 9 legal actions as a result of which a client may have 10 a claim in connection with portfolio securities held 11 or previously held by the client"; do you see that? 12 A Yes. 13 Q And did Artisan do that with respect to 14 Diamond? 15 A No. 16 Q We're going to turn to what's been marked 17 as Exhibit 29. It should be in front of you there. 18 A Oh, sorry. 19 Q There you go. 20 A Yes. 21 Q Ms. Tingle, do you recognize this 22 document? 23 A Yes. 24 Q And what is it? 25 A This is a copy of the fiduciary review</p>
<p style="text-align: right;">62</p> <p>1 A That's correct. 2 Q And that's your understanding of what -- 3 one of the things Artisan provides to PERS? 4 A Yes. 5 Q Okay. Turning to -- just, actually, on 6 the same page it says, "The second element of the 7 investment process is capital allocation"; do you 8 see that? 9 A Yes. 10 Q And under "Garden" do you know which 11 allocation Diamond would fall into on these? 12 A I don't. They generally began investing 13 in companies in a garden position. So they'll take 14 a very small position, which they literally grow 15 over time. So as the -- depending on the success of 16 their initial investment and based on their 17 research, they'll add to positions that they feel 18 are going to grow. So at some point I would assume 19 that Diamond began in the garden position. Where it 20 ended up, I don't know. 21 Q Okay. And under the garden description it 22 talks about companies that Artisan believes have a 23 good franchise, attractive valuation and so on; do 24 you see that? 25 A Yes.</p>	<p style="text-align: right;">64</p> <p>1 that we request from our managers annually. This is 2 the 2011 fiduciary review submitted by Artisan 3 Partners. 4 Q And what's the purpose of the fiduciary 5 review? 6 A It's really twofold. We send this out to 7 -- to get an idea about our commission recapture 8 program and how our managers are -- are using that 9 and directing commissions on our behalf or not, and 10 if they aren't, then they are required to give us a 11 reason why, and then the second part is to disclose 12 any relationship that any of our investment managers 13 might have with our investment consulting firm. We 14 do this for conflict of interest purposes so that we 15 know which of our managers are paying or not paying 16 our -- our investment consulting firm. 17 And then the third part, the political 18 contribution section has to do with government 19 disclosing contributions made to government 20 officials within Mississippi, and this is primarily 21 focused on our state treasurer, who sits on our 22 board and has a part in the investment decisions, 23 but since the board does see this, it has been 24 expanded to include all political candidates. 25 Q And is this required of all investment</p>

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">65</p> <p>1 management firms --</p> <p>2 A Yes.</p> <p>3 Q -- for PERS?</p> <p>4 A Yes.</p> <p>5 Q And all contractors with PERS?</p> <p>6 A No. This -- this is sent out by the</p> <p>7 investment department, and it's -- it is strictly</p> <p>8 for our investment managers.</p> <p>9 Q Do you know if there's a similar document</p> <p>10 that the Attorney General uses with its law firms or</p> <p>11 contractors?</p> <p>12 A I have no knowledge of what the Attorney</p> <p>13 General's office does.</p> <p>14 Q So looking at part three, it asks whether</p> <p>15 there is a current policy for monitoring and</p> <p>16 reporting campaign contributions, and so what</p> <p>17 information is -- is PERS looking for in that</p> <p>18 regard?</p> <p>19 A We're actually just looking for any policy</p> <p>20 or procedure that firms have to know what their</p> <p>21 individual employees might be doing so that we don't</p> <p>22 get a response that says we have no knowledge that</p> <p>23 anybody is giving any money to anybody. There's</p> <p>24 actually -- our concern is that that would -- that</p> <p>25 might be the comment that we would get, and so we</p>	<p style="text-align: right;">67</p> <p>1 unattached at some point since 2011. I don't have</p> <p>2 any knowledge personally. They would have attached</p> <p>3 it at the time. So ...</p> <p>4 Q What is "pay to play"?</p> <p>5 A "Pay to play" is giving campaign</p> <p>6 contributions or other compensation or any kind of</p> <p>7 benefit in return for the expectation or the actual</p> <p>8 awarding of -- of something of benefit, whether it's</p> <p>9 a contract or whatever the case may be.</p> <p>10 Q So -- so with respect to the investment</p> <p>11 managers, I think what you said was you thought</p> <p>12 Artisan was -- several -- a contract for several</p> <p>13 million dollars; is that right?</p> <p>14 A Yes.</p> <p>15 Q So the concern would be if Artisan was</p> <p>16 making campaign contributions and then awarded a</p> <p>17 contract for several million dollars, that would be</p> <p>18 a conflict, an issue?</p> <p>19 A It doesn't necessarily mean that there is</p> <p>20 a conflict, but there's certainly the -- there could</p> <p>21 certainly be the potential for conflict of that</p> <p>22 nature, yes.</p> <p>23 Q In looking at part B under "Political</p> <p>24 Contributions," it asks for a list of any</p> <p>25 contributions by Artisan or its associates to</p>
<p style="text-align: right;">66</p> <p>1 have asked for policies if there are internal</p> <p>2 policies, and most firms now do have policies to</p> <p>3 monitor or to have their employees report any</p> <p>4 campaign contributions that are made outside of</p> <p>5 their own local district or whatever, but we have a</p> <p>6 policy -- the board has a policy that they will not</p> <p>7 solicit campaign contributions, and since the state</p> <p>8 treasurer is on our board, there have been some</p> <p>9 instances in the past where that was a problem. So</p> <p>10 this is our way to monitor, "Are you giving money to</p> <p>11 any of our board members?"</p> <p>12 Q And is the concern that having received</p> <p>13 campaign contributions, the board would then give</p> <p>14 contracts to -- preferential contracts to certain</p> <p>15 firms?</p> <p>16 A That is generally what "pay to play"</p> <p>17 implies, yes.</p> <p>18 Q And, in fact, here Artisan attaches a "pay</p> <p>19 to play" policy -- or references a "pay to play"</p> <p>20 policy effective March 1st, 2011. That wasn't</p> <p>21 attached to this document that was produced. Do you</p> <p>22 have a copy of that "pay to play" policy?</p> <p>23 A I would think that we would in our files,</p> <p>24 but if it wasn't attached, then it's possible that</p> <p>25 it hasn't -- that it has not -- that it has become</p>	<p style="text-align: right;">68</p> <p>1 government officials, including political</p> <p>2 candidates, PACs or state or local parties in</p> <p>3 Mississippi; do you see that?</p> <p>4 A Yes.</p> <p>5 Q And why does PERS want that information?</p> <p>6 A Again, this is a document that is put out</p> <p>7 or sent out by my department. As I said, our state</p> <p>8 treasurer is a member of our board. So they're the</p> <p>9 only elected -- state-wide elected official. So</p> <p>10 it's a very broad policy so that we know -- the</p> <p>11 state treasurer would be included in this, but</p> <p>12 wouldn't be singled out. So it's written in this</p> <p>13 way so that we cover a broad net of political</p> <p>14 candidates. The PACs and the state and local</p> <p>15 parties are because those are indirect ways to get</p> <p>16 money to individual candidates.</p> <p>17 Q Okay. And do you know if similar</p> <p>18 information is sought from outside counsel by the</p> <p>19 Attorney General when it hires outside counsel on</p> <p>20 behalf of PERS?</p> <p>21 A I have no knowledge of what the Attorney</p> <p>22 General's office does.</p> <p>23 Q Do you think that the Attorney General</p> <p>24 should ask for that information before it awards</p> <p>25 contracts?</p>

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">69</p> <p>1 MR. HARNES: I'm going to object to this 2 -- to that line of questioning. This is an 3 investment officer here testifying as to 4 transactions that Mississippi affected. I'm not 5 going to advise her not to -- let you go on and on 6 about this. You know, her opinion as to what the 7 Attorney General's office should do is beyond 8 anything that this witness is here to testify to, 9 but you can go ahead and answer. 10 BY MS. BRETAN: 11 Q You can answer. 12 A Can you repeat the question? Sorry. 13 Q Do you think the Attorney General -- let's 14 go back. 15 My understanding is that the Attorney 16 General, with respect to litigation, is acting on 17 behalf of PERS; is that correct? 18 A That's correct, yes. 19 Q And is doing that with respect to this 20 litigation, correct? 21 A That is correct. 22 Q So do you think that the Attorney General, 23 before determining what counsel it will propose for 24 a securities litigation, should seek similar types 25 of information regarding political campaign</p>	<p style="text-align: right;">71</p> <p>1 then brought to the full board's attention, and the 2 board would take action as they felt appropriate. 3 If the manager is doing what they're supposed to do, 4 that's my primary concern. It is a board policy 5 that contributions are not solicited by board 6 members. So the board may or may not take any 7 action, but it definitely would cause me to have a 8 conversation with the investment manager. 9 Q What kind of conversation? 10 A It would be a conversation to discourage 11 that from any future -- they get solicitations and 12 they are pressured, can be -- can feel pressured to 13 make contributions, and we send them a copy of the 14 board of trustees' procedures manual that says that 15 the trustees are not supposed to solicit, and they 16 are generally more than happy to throw those 17 contribution requests in the trash. 18 Q And is the concern that there had -- if 19 there were significant campaign contributions and a 20 contract was awarded to an invest manager, would the 21 concern be, I guess, what's called here "pay to 22 play"? That there had been a quid pro quo? 23 A Yes, there is -- there is that. It 24 certainly could potentially, although the state 25 treasurer is only one of ten board members, but it</p>
<p style="text-align: right;">70</p> <p>1 contributions or donations to PACs? 2 A Should they ask for the disclosure of 3 that? In my opinion, I don't think that's 4 necessary. I think that information is, to some 5 degree, available on our Secretary of State's 6 website. 7 Q And that would be true of donations to the 8 treasurer, who is the board member of PERS as well? 9 A It would be true. This saves us the -- 10 saves us the trouble of having to go through those 11 reports, and it also gives our managers -- it shines 12 a light on where our managers are potentially giving 13 campaign contributions. So ... 14 Q Sunshine? 15 A Sunshine, yeah, sure. 16 Q And if you were to have found that there 17 were substantial donations by a new investment 18 manager to an elected official that sits on PERS' 19 board, would that affect the decision whether to go 20 ahead with that contract? 21 A It would -- I guess, first of all, we 22 wouldn't really find out about it before the fact 23 because this is only sent out to existing managers. 24 It would merit that the issue be brought to the 25 chairman of the board of trustees' attention and</p>	<p style="text-align: right;">72</p> <p>1 certainly could give the impression to the general 2 public that there was something -- there was some 3 impropriety. 4 Q And is the -- is the -- is the Attorney 5 General an elected position, to your knowledge? 6 A Yes. 7 MS. BRETAN: I'm going to mark as Exhibit 8 -- I think it's Exhibit 36. 9 (Exhibit 36 was marked for 10 identification by the court reporter.) 11 BY MS. BRETAN: 12 Q Ms. Tingle, do you recognize this 13 document? 14 A Yes. These are -- the first is the agenda 15 from the board of trustees meeting June 22nd, 2010, 16 and the following pages are the minutes from that 17 meeting. 18 Q And we talked earlier about board 19 meetings. Is this one of those board meetings for 20 the trustees of PERS that you would have attended? 21 A Yes. 22 Q Turning to page, I guess, 29 of the 23 minutes and Bates number 9413, it looks like there's 24 a litigation report there; is that correct? 25 A That is correct.</p>

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">73</p> <p>1 Q And is this standard for the minutes of 2 the board of PERS? 3 A Yes. 4 Q And it notes that there was a -- that 5 "Special Assistant Attorney General Jane Mapp, 6 currently representing the Attorney General at the 7 Department of Corrections, has been selected by PERS 8 staff to fill the PERS position"; do you see that? 9 A Yes. 10 Q And what's the PERS position? 11 A That's in-house counsel for PERS. Our 12 previous Attorney General -- they call him Special 13 Assistant Attorney General -- assigned to PERS was 14 retiring, Margo Bowers, and so Jane Mapp was 15 selected from a field of one proposed to us by the 16 Attorney General for a replacement. 17 Q And I -- I -- just to confirm, Mr. Neville 18 doesn't generally -- from the Attorney General's 19 office doesn't generally attend these meetings? 20 A No, he does not. 21 Q The litigation report, first paragraph 22 here, goes on to say that "Ms. Robertson noted that 23 a meeting of the National Association of Public 24 Pension Attorneys is being held in North Carolina 25 and that the Attorney General felt it would be</p>	<p style="text-align: right;">75</p> <p>1 law firms outside of the public service realm 2 represented as well as probably other service 3 providers. I know these national organizations -- 4 for example, two of the national retirement 5 organizations consist of trustees and staff from the 6 pension plans as well as investment managers, 7 custodial bank service providers, in general. 8 So ... 9 Q Okay. It goes on -- the litigation report 10 goes on to say that "Ms. Robertson," I guess, "in 11 the absence of Ms. Bowers," or is it Mr. Bowers? 12 A "Ms." 13 Q "Ms. Bowers gave a summary of cases and 14 actions since the last board meeting," and then it 15 goes on to list information about a number of cases 16 there; do you see that? 17 A Yes. 18 Q And then at the bottom of the list it says 19 "Securities Litigations" and just has, I guess, 20 names of securities litigations? 21 A Yes. 22 Q Is there more information than this 23 provided to the PERS board about securities 24 litigations? 25 A No, this is the report. This is actually</p>
<p style="text-align: right;">74</p> <p>1 beneficial for Ms. Mapp and the PERS attorney 2 representatives to attend"; do you see that? 3 A Yes. 4 Q Who are the PERS attorney representatives? 5 A That would have been Margo Bowers and -- 6 who retired shortly after that meeting, and we also 7 had a woman named Denise Mounger, who actually was 8 the policy advisor to the executive director at the 9 time. She had at one time been our -- worked for 10 the Attorney General's office and been assigned to 11 PERS, and that was in the late '80s, early '90s. 12 She then became a PERS employee and was a deputy 13 director there over the benefit side of -- of 14 things, and she worked as the policy advisor for the 15 executive director. She was an attorney by 16 training. So she attended this meeting every year. 17 Q Do you know what the National Association 18 of Public Pension Attorneys is? 19 A Yes, it's -- it's an organization of 20 counsel representing -- well, in-house counsel 21 representing pension plans such as PERS. 22 Q Are outside counsel participants in that 23 organization or just in-house? 24 A I'm not a member of the organization. I 25 do believe that there are probably law firms and --</p>	<p style="text-align: right;">76</p> <p>1 -- to my knowledge, this is -- occasionally there 2 might be a one- or two-sentence update on the cases, 3 but that's basically all that's -- and it's really 4 just kind of where things are as far as the process 5 goes. It's not details about the case. It's 6 whether a motion has been filed. It's that kind of 7 thing, procedural. 8 Q But this is just a list, not any details 9 on cases? 10 A That's -- 11 MR. HARNES: Objection. Asked and 12 answered. 13 THE WITNESS: Yes. 14 MS. BRETAN: Exhibit 37. 15 (Exhibit 37 was marked for 16 identification by the court reporter.) 17 BY MS. BRETAN: 18 Q Do you recognize this document? 19 A Yes, this is -- the first page is the 20 agenda from the December 21st, 2010, meeting of the 21 board of trustees, and then the subsequent pages are 22 the minutes from that meeting. 23 Q And if you turn to page, I guess, 14 of 24 the minutes, Bates label 9802, that's another 25 litigation report like the one we saw previously?</p>

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">77</p> <p>1 A Yes, it is.</p> <p>2 Q And Ms. Mapp would have presented the</p> <p>3 status of the cases listed here; is that right?</p> <p>4 A Yes. I'm sorry. Yes, that is true.</p> <p>5 Q And at the bottom there there's the list</p> <p>6 of securities litigation; do you see that?</p> <p>7 A Yes.</p> <p>8 Q Do you know if the board was provided any</p> <p>9 more information than what's in the list with</p> <p>10 respect to the individual securities litigations?</p> <p>11 A No. As I said before, if there is any</p> <p>12 additional information, it's where -- where things</p> <p>13 are from a procedural nature. It's not specifics</p> <p>14 about the case.</p> <p>15 Q Okay.</p> <p>16 MR. HARNES: I think, rather than asking</p> <p>17 her what Ms. Mapp would have stated, you should</p> <p>18 probably show the witness the entire minutes as to</p> <p>19 what's reflected was stated. That's, I guess, an</p> <p>20 objection to form.</p> <p>21 BY MS. BRETAN:</p> <p>22 Q Did Ms. Mapp present -- were you in</p> <p>23 attendance at this meeting; do you recall?</p> <p>24 A Yes, I was.</p> <p>25 MR. HARNES: Well, I think you should --</p>	<p style="text-align: right;">79</p> <p>1 A I do not recall. There is a -- at this</p> <p>2 particular meeting there is a -- a handout that does</p> <p>3 have a list of the cases, an update, as I said, on</p> <p>4 motions filed, motions denied, that sort of thing</p> <p>5 and what the -- what settlements we received -- what</p> <p>6 settlements we receive and, once PERS receives their</p> <p>7 settlements, their ultimate settlements per</p> <p>8 settlement what was received by PERS.</p> <p>9 Q And why would the board want to know what</p> <p>10 was received by PERS?</p> <p>11 A It really is a follow-up to the fact that</p> <p>12 we're in all these cases, and so they are interested</p> <p>13 in what the outcome is.</p> <p>14 Q If -- if PERS received a good settlement</p> <p>15 from -- from the case?</p> <p>16 A Good, bad or indifferent, it's --</p> <p>17 Q Okay.</p> <p>18 A -- they want to know what the -- what the</p> <p>19 entire settlement was and then what PERS actually</p> <p>20 receives. It's just a way, as fiduciaries, of</p> <p>21 monitoring the results of this activity.</p> <p>22 Q And in the handout you mentioned are the</p> <p>23 law firms in the cases listed as well?</p> <p>24 A I believe they are.</p> <p>25 Q Do you know if that document has been</p>
<p style="text-align: right;">78</p> <p>1 my only point is you should direct the witness's</p> <p>2 attention to the entire summary of what Ms. Mapp</p> <p>3 said, and there's something said on the next</p> <p>4 sentence.</p> <p>5 MS. BRETAN: Well, I'm going to get there</p> <p>6 John, please.</p> <p>7 MR. HARNES: Fine. Well, I think it's</p> <p>8 misleading to ask a question giving half a document</p> <p>9 and ask the witness to remember what occurred</p> <p>10 two-and-a-half years ago and not show her all the</p> <p>11 document.</p> <p>12 BY MS. BRETAN:</p> <p>13 Q At the bottom of the list of securities</p> <p>14 litigation cases it says that -- why don't you go</p> <p>15 ahead and read that two sentences there on page 15</p> <p>16 of the minutes, "In accordance with the request"?</p> <p>17 A Oh, okay. Yes.</p> <p>18 Q Do you see that? Could you read that?</p> <p>19 A Could I read it? Yes. "In accordance</p> <p>20 with the request from the board of the October</p> <p>21 meeting, Ms. Mapp presented a summary of</p> <p>22 settlements/funds received by PERS from securities</p> <p>23 litigation cases since 2004."</p> <p>24 Q And was that -- if you recall, was that a</p> <p>25 document or was that a verbal presentation?</p>	<p style="text-align: right;">80</p> <p>1 produced in this action?</p> <p>2 A Ms. Mapp produced all of the minutes; so I</p> <p>3 don't know what they actually produced.</p> <p>4 Q Okay. Is PERS -- is PERS interested in</p> <p>5 getting the most money back for the beneficiaries</p> <p>6 through the securities litigation -- the most money</p> <p>7 it's able to back for the beneficiaries through the</p> <p>8 securities litigation?</p> <p>9 A Yes.</p> <p>10 Q And so the amount of fees, for example,</p> <p>11 that come out of the settlements for a securities</p> <p>12 litigation would reduce the amount of money coming</p> <p>13 into PERS; is that right?</p> <p>14 A PERS as well as any other participant in</p> <p>15 the -- in the settlement, yes.</p> <p>16 (Exhibit 38 was marked for</p> <p>17 identification by the court reporter.)</p> <p>18 BY MS. BRETAN:</p> <p>19 Q You've just been given what's been marked</p> <p>20 as Exhibit 38. Do you recognize this document,</p> <p>21 Ms. Tingle?</p> <p>22 A Yes.</p> <p>23 Q And what is it?</p> <p>24 A This is -- the first page is the agenda</p> <p>25 from the April 27th, 2011, PERS board meeting, and</p>

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">81</p> <p>1 the subsequent pages are the minutes of that 2 meeting. 3 Q And turning to what is Bates-labeled 9380 4 to 9381, I guess that's pages 8 and 9 in the 5 minutes. 6 A Yes. 7 Q Let me first ask you: Do you recall -- 8 were you there at this meeting? 9 A It does not appear that I was. 10 Q Any reason to doubt that the minutes don't 11 reflect what occurred at the meeting? 12 A Oh, no. 13 Q Okay. So I'll have you just look at the 14 litigation report. You can look at the entire 15 thing, and then I'll ask you questions about it. 16 A Okay. 17 Q Just let me know when you're ready. 18 A Okay. 19 Q It looks like Ms. Mapp, again, provided an 20 overview of cases; is that correct? 21 A Yes. 22 Q Okay. And then turning to the section on 23 securities litigation, it has the list of securities 24 cases there again; do you see that? 25 A Yes, I do.</p>	<p style="text-align: right;">83</p> <p>1 in the various securities litigations? 2 MR. HARNES: Object to the form of the 3 question. 4 THE WITNESS: No. 5 MS. BRETAN: You know what? Let's take a 6 break. 7 THE VIDEOGRAPHER: Okay. I need to get us 8 off the record to change the DVDs. Just one moment. 9 This marks the end of tape number one in the 10 deposition of Lorrie Tingle. We're going off the 11 record, and the time is 4:05 p.m. 12 (Recess.) 13 THE VIDEOGRAPHER: Back on the record. 14 This marks the beginning of tape number two in the 15 deposition of Lorrie Tingle. On the record at 4:14. 16 MS. BRETAN: 39. 17 (Exhibit 39 was marked for 18 identification by the court reporter.) 19 BY MS. BRETAN: 20 Q We've marked as Exhibit 39 a document 21 Bates-labeled MSPERS 10565 to 10598. Do you 22 recognize this document? 23 A The first is an email to my staff member 24 Charles Nielsen, who oversees the Artisan portfolio 25 in addition to all the other domestic equity</p>
<p style="text-align: right;">82</p> <p>1 Q And then right below that it says that 2 "Ms. Mapp has reported that no securities litigation 3 settlements have been reported since the February 4 board meeting"; do you see that? 5 A Yes. 6 Q It goes on to say, "There was a discussion 7 pertaining to the listing of the securities 8 litigation firms and settlements and that 9 Ms. Robertson advised that staff will revise the 10 report and provide a summary of the information"; do 11 you see that? 12 A Yes. 13 Q Do you know what that discussion was 14 about? 15 A I do not. 16 Q Do you remember being asked by anyone to 17 provide -- to revise a report on settlements to 18 include the securities litigation firms? 19 A They wouldn't -- they would not -- the 20 board would not have asked me for that. They would 21 have asked Ms. Mapp; so no, and I wasn't at the 22 meeting. So I don't -- I don't recall exactly what 23 was asked. 24 Q Do you have any idea why the board would 25 be interested in what firms were representing PERS</p>	<p style="text-align: right;">84</p> <p>1 portfolios, and it appears that this was a document 2 sent in preparation for a conference call that was 3 to be held on August 16th, 2011, with Charles 4 Nielsen. 5 Q And the document attached here, this is an 6 investment review from PERS from Artisan; is that 7 right? 8 A That is correct. 9 Q And that's a review as of July 31st, 2011? 10 A Yes. 11 Q And would you have seen this document? 12 A Would I have seen it? Not necessarily. 13 Q Not necessarily. If you turn to page 6 of 14 the investment review, it's Bates-labeled 10573; do 15 you see that? 16 A Yes. 17 Q The -- the title there says "Investment 18 Philosophy Overview." Would that be Artisan 19 Partner's investment philosophy, to your knowledge? 20 A Yes, it would. 21 Q And looking down, there are three sort of 22 boxes there. The first says "Broad Knowledge." 23 MR. HARNES: Sorry. I'm sorry. I didn't 24 mean to interrupt. 25 MS. BRETAN: Is something funny?</p>

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">85</p> <p>1 MR. HARNES: I was -- off the record for 2 just a second. I was just -- 3 THE VIDEOGRAPHER: Okay. Let me get us 4 off the record. 5 MR. HARNES: It doesn't matter. 6 THE VIDEOGRAPHER: Is that okay with 7 everybody? Do you want to go off the record? 8 MS. BRETAN: That's fine. 9 MR. HARNES: I was just suggesting that 10 selling a document that says "Be right more often 11 than wrong," and people could pay to do that. That 12 was all. I'm sorry. I was not making any comment 13 about any question or anything. I was just 14 observing that I'm in the wrong business. 15 MS. BRETAN: Okay. 16 Q The first box there, "One Part of the 17 Investment Philosophy," it says, "Broad Knowledge." 18 It says, "Invest opportunistically across the entire 19 economy"; do you see that? 20 A Yes, I do. 21 Q And is Artisan's ability to -- what does 22 "invest opportunistically" mean to you? 23 A It means to -- to be selective in what -- 24 in the investments that you make. 25 Q For opportunities in the investments?</p>	<p style="text-align: right;">87</p> <p>1 A Yes. It's the same information that was 2 in their ADV submittal. 3 Q Okay. And that was, you know, an estimate 4 based on their bottom-up or fundamental research? 5 A Yes. 6 Q Okay. That's not something you can look 7 up, what's the private market value, like on an 8 objective board or something? 9 A That is correct. 10 Q Okay. That's sort of Artisan's own 11 information? 12 A Yes. 13 Q Okay. If you turn to page 9 of the 14 exhibit, the "Presentation" -- 15 A Yes. 16 Q -- the -- it's Bates-labeled 10576; do you 17 see that? 18 A Yes. 19 Q The document is redacted, but I think 20 what's redacted here -- I don't know. Maybe you 21 know -- is information regarding PERS performance in 22 the quarters -- the quarter and July and year to 23 date, one year, et cetera; is that right? 24 A Yes. 25 Q Would -- typically that information would</p>
<p style="text-align: right;">86</p> <p>1 A Yes, yes. 2 Q And is that -- and that's based on broad 3 knowledge? 4 A That is correct. 5 Q Okay. And is that ability of Artisan to 6 invest opportunistically something that PERS 7 appreciated in its investment manager? 8 A Yes. 9 Q And then turning the page to page 7, this 10 is an overview of the investment process and 11 security selection. It says, "There are three key 12 elements"; do you see that? 13 A Yes. 14 Q First is about "Franchise Companies." 15 A Yes. 16 Q And the second one is "Attractive 17 Valuations"; do you see that? 18 A Yes. 19 Q And listed there it says, "Purchase stocks 20 at a discount to private market value"; do you see 21 that? 22 A Yes. 23 Q And is that the estimate we talked about 24 earlier, private market value that Artisan uses to 25 determine whether to invest?</p>	<p style="text-align: right;">88</p> <p>1 be listed here in a -- 2 A Yes. 3 Q Okay. And is that information privileged 4 information? 5 A No. 6 Q Is there -- it's just how Artisan has done 7 for PERS; is that right? 8 A No. The original report would have had 9 that information -- 10 Q Okay. 11 A -- there or the report that was supplied 12 to us would have had the information. 13 Q On how PERS' investments with Artisan's 14 had performed relative to the rest of the mid-cap -- 15 A Yes. 16 Q -- index? Okay. 17 40. 18 (Exhibit 40 was marked for 19 identification by the court reporter.) 20 BY MS. BRETAN: 21 Q Just circling back for a minute before we 22 talk about Exhibit 40, so that information about 23 Artisan's performance, periodic performance or 24 yearly, quarterly, whatever, that's -- that's what 25 PERS would use to sort of judge whether Artisan's</p>

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">89</p> <p>1 investments were doing well relative to the Russell</p> <p>2 mid-cap as a benchmark; is that right?</p> <p>3 A That's correct.</p> <p>4 Q Does Artisan generally perform well</p> <p>5 relative to the Russell mid-cap benchmark?</p> <p>6 A Yes.</p> <p>7 Q So you're -- PERS is happy with Artisan?</p> <p>8 A Yes.</p> <p>9 Q Okay. Okay. Exhibit 40. Do you</p> <p>10 recognize this document, Ms. Tingle?</p> <p>11 A Yes, it is one of the month-end reports</p> <p>12 submitted to us by Artisan, and this is as of</p> <p>13 September 30th, 2011.</p> <p>14 Q And Artisan submits this to PERS monthly;</p> <p>15 is that right?</p> <p>16 A Yes, they do.</p> <p>17 Q And if you turn to what's Bates-labeled</p> <p>18 11294, it's toward the back. Are you there?</p> <p>19 A Yes.</p> <p>20 Q Forgive my eyesight, but I think what this</p> <p>21 says is -- it reflects is a purchase of Diamond</p> <p>22 Foods shares on September 28th, 2011; is that right?</p> <p>23 A Yes.</p> <p>24 Q And so that would have been a purchase</p> <p>25 that Artisan decided to make in Diamond Foods on</p>	<p style="text-align: right;">91</p> <p>1 MS. BRETAN: Okay.</p> <p>2 (Exhibit 41 was marked for</p> <p>3 identification by the court reporter.)</p> <p>4 BY MS. BRETAN:</p> <p>5 Q You've just been given what's been marked</p> <p>6 as Exhibit 41, Ms. Tingle. Do you recognize this</p> <p>7 document?</p> <p>8 A Yes. It is -- Artisan sends us a</p> <p>9 quarterly management letter that basically recaps</p> <p>10 their performance and some of the portfolio activity</p> <p>11 for the -- the preceding quarter. So this is their</p> <p>12 -- part of their quarterly reporting package.</p> <p>13 Q And so Artisan provides information on a</p> <p>14 quarterly basis? Is that -- is it based on the</p> <p>15 calendar year or how does --</p> <p>16 A Yes.</p> <p>17 Q -- that work?</p> <p>18 A No, it is on a calendar year.</p> <p>19 Q So the fourth quarter would be --</p> <p>20 A As of December 31.</p> <p>21 Q As of December -- okay. And this letter</p> <p>22 is dated October 17th. So that would relate to the</p> <p>23 third quarter?</p> <p>24 A That's correct.</p> <p>25 Q Okay. And what's the purpose of these</p>
<p style="text-align: right;">90</p> <p>1 that date?</p> <p>2 A That's correct.</p> <p>3 Q And do you know what information Artisan</p> <p>4 would have been relying on when it made the purchase</p> <p>5 on September 28th, 2011?</p> <p>6 A No.</p> <p>7 Q And then turning to page 11297, page</p> <p>8 Bates-labeled 11297, this shows a sale of Diamond</p> <p>9 shares on September 30th, 2011; do you see that?</p> <p>10 A Yes.</p> <p>11 Q And do you know what information -- and</p> <p>12 would Artisan have made the decision to sell on that</p> <p>13 date --</p> <p>14 A Yes.</p> <p>15 Q -- not PERS?</p> <p>16 A Correct.</p> <p>17 Q Okay. And do you know what information</p> <p>18 Artisan was relying on when it sold on</p> <p>19 September 30th, 2011?</p> <p>20 A No.</p> <p>21 Q Is it under- -- is it your understanding</p> <p>22 that Artisan -- I think we've talked about this, but</p> <p>23 Artisan conducts its own research about stocks that</p> <p>24 inform its purchases and sales; is that right?</p> <p>25 A That is correct.</p>	<p style="text-align: right;">92</p> <p>1 letters?</p> <p>2 A The purpose is really just to recap for --</p> <p>3 for our records and for staff performance</p> <p>4 measurements done on a quarterly basis. So this is</p> <p>5 really just a review -- to provide a review for PERS</p> <p>6 of what's happened with the portfolio over the</p> <p>7 preceding quarter.</p> <p>8 Q And is the ultimate performance measured</p> <p>9 on an annual basis, then?</p> <p>10 A It is. Actually, as far as the</p> <p>11 performance measurement that is most important to</p> <p>12 PERS, it's on a rolling three-year basis, but it is</p> <p>13 measured quarterly on a one-, three-, five-, seven-,</p> <p>14 ten-year, however long.</p> <p>15 Q And this page 1184, this is a letter to</p> <p>16 you, correct?</p> <p>17 A Yes.</p> <p>18 Q And do the letters always come to you from</p> <p>19 Artisan?</p> <p>20 A The letters are emailed out and they're</p> <p>21 addressed to me. They're also -- as you can see</p> <p>22 from the email, they go to Callan. They go to</p> <p>23 Charles Nielsen on my staff and generally Elaine</p> <p>24 Kyzer, who actually keeps up with all of our filing,</p> <p>25 is normally copied on this. So ...</p>

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">93</p> <p>1 Q And at the bottom there's a label that</p> <p>2 says "Redacted." Do you -- can you tell from</p> <p>3 looking at the document what information was</p> <p>4 redacted?</p> <p>5 A It appears that the performance specific</p> <p>6 to the PERS Artisan mid-cap portfolio was redacted.</p> <p>7 Q But you would have received that</p> <p>8 information?</p> <p>9 A Yes.</p> <p>10 Q And listed next to that is the Russell</p> <p>11 mid-cap growth index?</p> <p>12 A Correct.</p> <p>13 Q And so by looking at whatever was listed</p> <p>14 in the first column and comparing it to the second</p> <p>15 column, that's how you judge Artisan's performance</p> <p>16 for that quarter --</p> <p>17 A That's correct.</p> <p>18 Q -- or for July-August calendar year?</p> <p>19 A For the quarter, and the year to date is</p> <p>20 below that.</p> <p>21 Q Turning the page, there's a discussion of</p> <p>22 performance.</p> <p>23 A Yes.</p> <p>24 Q Again, I think there's information</p> <p>25 redacted here, but looking through the letter, if</p>	<p style="text-align: right;">95</p> <p>1 during the quarter. China has been a -- as it says</p> <p>2 here, "has been a driving force." A lot of the -- a</p> <p>3 lot of the securities and the companies within --</p> <p>4 not just non-U.S. companies, but U.S. companies, has</p> <p>5 been very dependent on demand from China over the</p> <p>6 past few years. So when China slows down, it slows</p> <p>7 down -- it has a very far-reaching effect on markets</p> <p>8 worldwide.</p> <p>9 Q Because demand from China would be slowing</p> <p>10 down and have an effect on U.S. companies?</p> <p>11 A Potentially, yes.</p> <p>12 Q Okay. So the letter, as far as you know,</p> <p>13 doesn't mention Diamond?</p> <p>14 A As far as I know.</p> <p>15 Q Okay. And that's October 17th, 2011.</p> <p>16 (Exhibit 42 was marked for</p> <p>17 identification by the court reporter.)</p> <p>18 BY MS. BRETAN:</p> <p>19 Q I'm going to mark Exhibit 42. Do you</p> <p>20 recognize Exhibit 42?</p> <p>21 A Yes, this is another of the monthly</p> <p>22 reporting packages from Artisan, and this is as of</p> <p>23 November 30th, 2011.</p> <p>24 Q So it would be a report of transactions</p> <p>25 for the month of November or as of November -- the</p>
<p style="text-align: right;">94</p> <p>1 you wouldn't mind looking through the letter and</p> <p>2 just letting me know if you see any reference to</p> <p>3 Diamond in here.</p> <p>4 A I do not.</p> <p>5 Q Do you know if the unredacted letter</p> <p>6 referred to Diamond?</p> <p>7 A I do not.</p> <p>8 Q On the second page of the letter under</p> <p>9 "Performance Discussion," in the first paragraph</p> <p>10 there it notes that "Even China, which had been a</p> <p>11 driving force for the world economy, experienced</p> <p>12 rising inflation and signs of slowing growth"; do</p> <p>13 you see that?</p> <p>14 A Yes.</p> <p>15 Q And that's -- is that with reference to</p> <p>16 the third-quarter period?</p> <p>17 A Yes.</p> <p>18 Q And why would -- what was your</p> <p>19 understanding of why that information was relevant</p> <p>20 to PERS?</p> <p>21 A Because, as you can see from the negative</p> <p>22 returns for the index, my guess would have been that</p> <p>23 would be that Artisan's performance was also</p> <p>24 negative during that period. This is really just to</p> <p>25 lay the groundwork for why the markets were down</p>	<p style="text-align: right;">96</p> <p>1 end of November 2011?</p> <p>2 A As of the end of November. It's</p> <p>3 performance. It also gives a breakdown of some</p> <p>4 portfolio statistics, and then it is transactions.</p> <p>5 Q Okay. And turning, if you will, to what's</p> <p>6 Bates-labeled MSPERS 11320 toward the back of the</p> <p>7 document -- I don't think there are pages on here.</p> <p>8 A I'm sorry. What was the number?</p> <p>9 Q 11320.</p> <p>10 A Okay.</p> <p>11 Q Looking at 11320, it appears to show a</p> <p>12 number of sales of Diamond Foods on November 11th,</p> <p>13 14th, 15th and 16th.</p> <p>14 A Yes.</p> <p>15 Q Do you see that?</p> <p>16 A Uh-huh.</p> <p>17 Q And it would have been Artisan who made</p> <p>18 the decision to sell those shares?</p> <p>19 A That's correct.</p> <p>20 Q And then turning to -- do you know why</p> <p>21 Artisan was selling the shares?</p> <p>22 A Based on the comments on the first page of</p> <p>23 this document, it says, "They sold Diamond Foods</p> <p>24 amid questions surrounding its accounting for</p> <p>25 payments to walnut growers which threatened the</p>

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">97</p> <p>1 company's ability to close its planned acquisition 2 of Pringles from Proctor & Gamble." 3 Q And they -- this is an -- this is after 4 the fact, that information? 5 A After they -- 6 Q After they -- 7 A -- made the transactions. 8 Q -- when you received this? 9 When did you receive this report? 10 A Well, we would have received it in 11 December after the November month end, and the 12 transactions took place during November. So this 13 would have been written as a summary of -- as a 14 summary commentary on their transactions during 15 November. 16 Q Okay. That you would have received in 17 December? 18 A December, correct. 19 Q And specifically turning back to 11320 -- 20 A Yes. 21 Q -- do you know what information Artisan 22 specifically would have been relying on on 23 November 11th when it determined to sell shares of 24 Diamond? 25 A No.</p>	<p style="text-align: right;">99</p> <p>1 electronic, whatever that might be. 2 Q Okay. But is that, generally speaking -- 3 it's not necessarily -- it's just that the 4 commission on this trade was applied to something 5 for Artisan? 6 A Correct. 7 Q But it doesn't necessarily mean that it's 8 applied to this specific trade? 9 A It means that the trade dollars -- part of 10 the commission dollars that were paid to this broker 11 subsequently were used. The broker then supplied 12 Artisan with some sort of electronic service. 13 MS. BRETAN: Okay. Thanks. 14 (Exhibit 43 was marked for 15 identification by the court reporter.) 16 BY MS. BRETAN: 17 Q The court reporter has just marked 18 Exhibit 43. Do you recognize this document? 19 A Yes. This is part of the reporting 20 requirements that are used when our managers come in 21 to present to the board on their annual visit. 22 Q And in section two -- I guess there's 23 information redacted from this document as well, if 24 you look at 11328. Again, that would -- would that 25 have been the performance of --</p>
<p style="text-align: right;">98</p> <p>1 Q If you look over on the right-hand side 2 there, on the third-to-last column -- 3 MR. HARNES: Which page are we on again? 4 MS. BRETAN: 11320. 5 THE WITNESS: Yes. 6 MR. HARNES: I'll get there. 7 BY MS. BRETAN: 8 Q Do you see that notation "Electronic"? 9 A Yes. 10 Q Do you know what that is? 11 A They -- Artisan uses their commission 12 dollars to pay for certain services. That's not 13 unusual in the world of investment management. So 14 they are receiving some sort of electronic service. 15 It could be Bloomberg, a subscription to Bloomberg, 16 whatever. They use the commission dollars for 17 various purposes. 18 Q And is that related to the specific trade? 19 A No. It's -- well, it is, but it's -- it 20 is saying why they -- okay. If you start one column 21 over to the left, it gives the broker code, and 22 there's commission information, and then their 23 system denotes what those commissions -- they traded 24 through ITGI and the part of those commission 25 dollars were used for electronic -- something</p>	<p style="text-align: right;">100</p> <p>1 A Yes. 2 Q -- Artisan for PERS? 3 A Yes. 4 Q And then turning to 11329, can you tell me 5 what this page reflects? 6 A Yes. We ask each manager -- we had these 7 -- all of these standard templates for the managers 8 to use so that we -- at a minimum we get something 9 consistent from all managers, and this is to provide 10 a summary of their investment strategy for the 11 board, and then under number one it's to talk about 12 any changes that -- significant changes that took 13 place in the account over the year, which is the 14 period that they're reporting over, and then they 15 are also supposed to denote whether there are any 16 changes to their strategy over the course of the 17 year. 18 Q And -- sorry. I didn't mean to cut you 19 off. 20 A That's okay. It just provides an overview 21 to the board, a summary of what's happened over the 22 year. 23 Q And with respect to item two there, 24 "Deviations from Previous Outline Strategy," it says 25 there are none; is that your understanding?</p>

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">101</p> <p>1 A Yes.</p> <p>2 Q There were no strategy changes by Artisan</p> <p>3 in the period reflected here?</p> <p>4 A There were no changes in their overall</p> <p>5 portfolio management strategy, yes.</p> <p>6 MS. BRETAN: Okay.</p> <p>7 (Exhibit 44 was marked for</p> <p>8 identification by the court reporter.)</p> <p>9 BY MS. BRETAN:</p> <p>10 Q Exhibit 44 is another quarterly letter; is</p> <p>11 that right?</p> <p>12 A That is correct.</p> <p>13 Q And what's the date of the letter?</p> <p>14 A The letter is dated January 13th, 2012.</p> <p>15 Q And on 11851, the first page, it's -- the</p> <p>16 letter again talks about performance; is that right?</p> <p>17 A Yes.</p> <p>18 Q And compares -- would have compared PERS</p> <p>19 Mississippi performance to the Russell mid-cap?</p> <p>20 A That's correct.</p> <p>21 Q Is it your experience in working with</p> <p>22 investment managers that -- let me ask it this way:</p> <p>23 Are -- are most of your investment managers on a</p> <p>24 calendar year -- quarter -- quarterly reporting</p> <p>25 structure?</p>	<p style="text-align: right;">103</p> <p>1 in the fourth quarter than in other quarters?</p> <p>2 A No. Our fiscal year-end is June 30th.</p> <p>3 That's really the most important date for us, that</p> <p>4 performance is as good as it can be. So there's</p> <p>5 really no motivation for our managers to -- to do</p> <p>6 anything around any quarter-end, really, but we</p> <p>7 don't -- I would not say that we see more activity</p> <p>8 at quarter-end as opposed to any other time. Index</p> <p>9 funds maybe because they have clients coming in or</p> <p>10 going out of funds at quarter-end a lot of times,</p> <p>11 but as far as active managers, no, there's no real</p> <p>12 pattern there.</p> <p>13 Q Managers are -- the annual performance of</p> <p>14 the managers ends at the end of December in a given</p> <p>15 year; is that correct?</p> <p>16 A Well, yes, it does, but we -- we look at</p> <p>17 them every quarter, and so every quarter we are</p> <p>18 looking at that 12-month period as the one-year --</p> <p>19 as the one-year period. So one year as of</p> <p>20 June 30th is a one-year return for us, which is</p> <p>21 really critical. It's our -- our fiscal year-end.</p> <p>22 September 30th we look at the 12 months prior. So</p> <p>23 that's a one-year. So it's -- any 12-month period</p> <p>24 is -- there's no 12-month period that's really any</p> <p>25 more significant than another. So -- from a</p>
<p style="text-align: right;">102</p> <p>1 A Yes.</p> <p>2 Q And Artisan is one of those?</p> <p>3 A That's correct.</p> <p>4 Q And is it your experience as the chief</p> <p>5 investment officer --</p> <p>6 A Yes.</p> <p>7 Q -- of PERS that there's a higher turnover</p> <p>8 with respect to stocks in Q4 as compared to the</p> <p>9 prior quarters?</p> <p>10 A Not necessarily. Some years maybe. This</p> <p>11 year, 2012 particularly, because there were some</p> <p>12 concerns about changes in the tax structure, capital</p> <p>13 gains and so a lot of people sold stocks to try to</p> <p>14 realize capital gains before taxes went up in 2013.</p> <p>15 It is not necessarily the case in any -- any year</p> <p>16 unless there's something like that going on that</p> <p>17 there is significant selling. We're not taxable.</p> <p>18 So it's not a -- it's not a tax-related phenomenon</p> <p>19 for us, but our managers could anticipate that there</p> <p>20 might be a big sell-off for one reason or another</p> <p>21 and sell securities potentially, or buy securities.</p> <p>22 Q And aside from tax considerations, if a --</p> <p>23 an investment manager has a stock that's</p> <p>24 underperforming, is it your -- your experience that</p> <p>25 for those types of stocks you might see more selling</p>	<p style="text-align: right;">104</p> <p>1 performance perspective.</p> <p>2 Q If you turn to 11852, it's the second page</p> <p>3 of the letter. Down at the bottom it notes that</p> <p>4 Diamond was a bottom-performing stock; do you see</p> <p>5 that?</p> <p>6 A Yes.</p> <p>7 Q And I think this is similar to the</p> <p>8 language in the other document we were looking at,</p> <p>9 but it says that "Artisan sold the position amid</p> <p>10 questions surrounding," I guess, "Diamond's</p> <p>11 accounting for payment to walnut growers"; do you</p> <p>12 see that?</p> <p>13 A Yes.</p> <p>14 Q And "which threatened the company's</p> <p>15 ability to close its planned acquisition of Pringles</p> <p>16 from Proctor & Gamble."</p> <p>17 A Yes.</p> <p>18 Q And my understanding is that Artisan</p> <p>19 liquidated its -- liquidated its position in Diamond</p> <p>20 in November 2011. I think we looked at the list --</p> <p>21 A Yes.</p> <p>22 Q -- of transactions earlier. Yeah.</p> <p>23 Do you know what -- what Artisan would</p> <p>24 have been relying -- what information Artisan would</p> <p>25 have been relying on in selling those shares in</p>

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">105</p> <p>1 November?</p> <p>2 MR. HARNES: I think that question has</p> <p>3 been asked and answered.</p> <p>4 THE WITNESS: No.</p> <p>5 BY MS. BRETAN:</p> <p>6 Q Do you -- did -- do you think Artisan</p> <p>7 thought there was fraud at Diamond in November?</p> <p>8 A I --</p> <p>9 MR. HARNES: I'm going to object to that</p> <p>10 question. If you want to ask her what they said or</p> <p>11 whatever, but, you know, she can go ahead and</p> <p>12 answer, but I think that that's not a proper</p> <p>13 question.</p> <p>14 THE WITNESS: I don't know what they were</p> <p>15 relying on other than there were questions around</p> <p>16 accounting payments. So I guess that -- I don't</p> <p>17 know whether they knew anything for certain, but</p> <p>18 just the concern around the complication that there</p> <p>19 might be something was enough to have them sell. It</p> <p>20 was in their garden positions, which means it's a</p> <p>21 small holding, and it probably wasn't worth the</p> <p>22 headache to them. But you would have to ask</p> <p>23 Artisan.</p> <p>24 (Exhibit 45 was marked for</p> <p>25 identification by the court reporter.)</p>	<p style="text-align: right;">107</p> <p>1 advised that Diamond Foods is a new securities</p> <p>2 litigation case dealing with improper accounting</p> <p>3 procedures. PERS is seeking lead plaintiff status</p> <p>4 in this case"; do you see that?</p> <p>5 A Yes.</p> <p>6 Q Was PERS informed that it would be seeking</p> <p>7 lead plaintiff status in this case before this time?</p> <p>8 A Not to my knowledge.</p> <p>9 Q Did anyone --</p> <p>10 MR. HARNES: Excuse me. When you say</p> <p>11 "PERS" or the PERS board? Because obviously</p> <p>12 somebody -- Ms. Mapp was informed.</p> <p>13 BY MS. BRETAN:</p> <p>14 Q Was the PERS board informed that it would</p> <p>15 be seeking -- that PERS would be seeking lead</p> <p>16 plaintiff status before this time?</p> <p>17 A No.</p> <p>18 Q Were you informed that PERS would be</p> <p>19 seeking lead plaintiff status before this time?</p> <p>20 A I do not recall.</p> <p>21 Q Do you know if anyone spoke to other</p> <p>22 people in your office about the decision to seek</p> <p>23 lead plaintiff status in the Diamond case -- in this</p> <p>24 case before the decision was made?</p> <p>25 A I don't know.</p>
<p style="text-align: right;">106</p> <p>1 BY MS. BRETAN:</p> <p>2 Q And we've marked as Exhibit 45 what</p> <p>3 appears to be an agenda in minutes relating to a</p> <p>4 meeting on February 28th, 2012, of PERS' board; is</p> <p>5 that right?</p> <p>6 A That is correct.</p> <p>7 Q Were you at this meeting?</p> <p>8 A Yes, I was.</p> <p>9 Q And do you recognize this document?</p> <p>10 A Yes.</p> <p>11 Q If you turn to 8636 through 8638, I</p> <p>12 believe that's a litigation report to the board?</p> <p>13 A Yes, it is.</p> <p>14 Q And this is similar to the other</p> <p>15 litigation reports we've seen to the board today?</p> <p>16 A Yes.</p> <p>17 Q And again listed there under "Securities</p> <p>18 Litigation" are a list of the cases.</p> <p>19 A Yes.</p> <p>20 Q And then continuing down, do you recall if</p> <p>21 there was more information provided about the</p> <p>22 specific cases?</p> <p>23 A I don't recall.</p> <p>24 Q Okay. And continuing down to -- on page</p> <p>25 8638, page 18 of the minutes, it says, "Ms. Mapp</p>	<p style="text-align: right;">108</p> <p>1 Q If someone wanted to talk to Artisan about</p> <p>2 the investments, would that come through your</p> <p>3 office? Would they -- if -- about the investments</p> <p>4 in Diamond, would that -- would you be the first</p> <p>5 point of contact?</p> <p>6 A Yes.</p> <p>7 Q And do you know if anyone spoke to Artisan</p> <p>8 about the decision to seek lead plaintiff status</p> <p>9 before it was made?</p> <p>10 A Not to my knowledge.</p> <p>11 Q At this meeting was the board informed of</p> <p>12 who was being considered as lead counsel?</p> <p>13 A No, not to my knowledge.</p> <p>14 (Exhibit 46 was marked for</p> <p>15 identification by the court reporter.)</p> <p>16 BY MS. BRETAN:</p> <p>17 Q You've just been given what's been marked</p> <p>18 as Exhibit 46, Ms. Tingle. Do you recognize this</p> <p>19 document?</p> <p>20 A Yes.</p> <p>21 Q And what is it?</p> <p>22 A The first page is the agenda from the</p> <p>23 April 24th, 2012, PERS board meeting and then behind</p> <p>24 that are the minutes for that same meeting.</p> <p>25 Q Were you at this meeting, if you recall?</p>

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">109</p> <p>1 A It doesn't appear that I was.</p> <p>2 Q There's no -- you have no reason to doubt</p> <p>3 that these were the minutes of the meeting?</p> <p>4 A No, these were the official minutes.</p> <p>5 So ...</p> <p>6 Q Okay. If you turn to page 890 -- 89 --</p> <p>7 sorry -- 8910, it's addendum L.</p> <p>8 A Yes.</p> <p>9 Q What is this? What is addendum L?</p> <p>10 A This is the investment policy statement</p> <p>11 that the board adopted at their April 2012 meeting,</p> <p>12 and it's -- it's basically a -- a policy document</p> <p>13 that is in place to -- to give a framework to the</p> <p>14 management of the investment program.</p> <p>15 Q Was there a policy in place prior to</p> <p>16 April 2012, similar investment policy statement?</p> <p>17 A I believe that this -- yes. This was the</p> <p>18 -- this was -- we review this statement annually.</p> <p>19 So this was the -- the 2012 review and any changes</p> <p>20 that were made were adopted at this meeting.</p> <p>21 Q Okay. And do you remember -- were you</p> <p>22 involved at all with the changes to the investment</p> <p>23 policy statement?</p> <p>24 A Yes.</p> <p>25 Q And do you recall offhand -- are there</p>	<p style="text-align: right;">111</p> <p>1 A I don't -- I don't recall. I don't think</p> <p>2 it was. I think this has been in it since the</p> <p>3 beginning.</p> <p>4 Q Sorry.</p> <p>5 A It's okay.</p> <p>6 THE VIDEOGRAPHER: Watch your microphone.</p> <p>7 BY MS. BRETAN:</p> <p>8 Q Okay. Looking at page 8, the ethics and</p> <p>9 conflict of interest, the first point talks about</p> <p>10 board members being "fund fiduciaries with a duty of</p> <p>11 loyalty to PERS and responsibility to observe the</p> <p>12 exclusive benefit rule"; do you see that?</p> <p>13 A Yes.</p> <p>14 Q And what's the "exclusive benefit rule"?</p> <p>15 A That the investments made and really any</p> <p>16 -- any action that they take should be for the</p> <p>17 exclusive benefit of the participants and</p> <p>18 beneficiaries of PERS as opposed to something that</p> <p>19 might be beneficial to their -- their own</p> <p>20 constituents particularly or to the governor or to</p> <p>21 various politicians, that their duty is loyalty</p> <p>22 exclusively to the participants in PERS.</p> <p>23 Q And it goes on to say that "All members of</p> <p>24 the board, executive director, investment staff will</p> <p>25 disclose any conflict of interest related to PERS</p>
<p style="text-align: right;">110</p> <p>1 many changes or just a few that were adopted?</p> <p>2 A This has been a document that hasn't been</p> <p>3 around but for really the last three years. So most</p> <p>4 of the changes that were made -- we actually added</p> <p>5 all of these appendices at the back or -- I'm sorry</p> <p>6 -- the -- the asset allocation appendix was added.</p> <p>7 We have updated it more than anything. There aren't</p> <p>8 really significant changes, but there have been some</p> <p>9 updates.</p> <p>10 Q Okay. And if you turn to, I guess, page 8</p> <p>11 of addendum L Bates-labeled MSPERS --</p> <p>12 A Yes.</p> <p>13 Q -- 8917 --</p> <p>14 A Yes.</p> <p>15 Q -- what -- what is this? What is page 8?</p> <p>16 A Page 8 identifies or lays out the ethics</p> <p>17 and conflicts-of-interest policy that the PERS</p> <p>18 portfolio will be managed under. So it talks about</p> <p>19 the responsibility of the board, PERS staff,</p> <p>20 investment management consultants, custodial banks</p> <p>21 as far as loyalty to PERS and avoiding any conflicts</p> <p>22 of interest, including disclosure of "pay to play"</p> <p>23 relationships, which we discussed previously.</p> <p>24 Q Was this a new -- was this a new addition</p> <p>25 to the investment policy statement?</p>	<p style="text-align: right;">112</p> <p>1 investments."</p> <p>2 A Correct.</p> <p>3 Q And with respect to litigation, securities</p> <p>4 litigation, this litigation, the Attorney General is</p> <p>5 also acting as a fiduciary with respect to PERS; is</p> <p>6 that right?</p> <p>7 A You know, that's not -- I don't know</p> <p>8 exactly what his role is, whether it's a fiduciary</p> <p>9 or whether it's actually solely as the legal</p> <p>10 representative for state agencies, all state</p> <p>11 agencies, and PERS happens to be one of them.</p> <p>12 Q And would you expect that the Attorney</p> <p>13 General, if there was a conflict of interest with</p> <p>14 respect to PERS, would let PERS know with respect to</p> <p>15 the Attorney General's relationship to PERS in some</p> <p>16 way -- would let PERS know about that conflict of</p> <p>17 interest?</p> <p>18 A I would assume so, yes.</p> <p>19 MR. HARNES: I'm not sure I understand</p> <p>20 that question, but if the witness did, she can go</p> <p>21 ahead and answer it.</p> <p>22 THE WITNESS: I think if the attorney felt</p> <p>23 that there was a conflict of interest, then he would</p> <p>24 disclose that to PERS.</p> <p>25 //</p>

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">113</p> <p>1 BY MS. BRETAN:</p> <p>2 Q And "pay to play" agreements were an</p> <p>3 example of one of the things that -- that you think</p> <p>4 would need to be disclosed to PERS or circumstances</p> <p>5 that could suggest a "pay to play" arrangement?</p> <p>6 MR. HARNES: I'm not sure I understand</p> <p>7 that question. Are you saying if the Attorney</p> <p>8 General has a "pay to play" relationship, that</p> <p>9 should be disclosed; is that your question?</p> <p>10 BY MS. BRETAN:</p> <p>11 Q Earlier we talked about campaign</p> <p>12 contributions and contracts being awarded by elected</p> <p>13 officials having -- suggesting a potential "pay to</p> <p>14 play" conflict issue --</p> <p>15 A Yes.</p> <p>16 Q -- is that right?</p> <p>17 A Yes.</p> <p>18 Q And if there were contributions to the</p> <p>19 Attorney General's campaign, for example, that could</p> <p>20 lead to allegations related to awarding contracts as</p> <p>21 a result of those contributions, you would expect --</p> <p>22 you would hope that that information would be</p> <p>23 disclosed to PERS?</p> <p>24 A We would hope so.</p> <p>25 MS. BRETAN: 47.</p>	<p style="text-align: right;">115</p> <p>1 "Ms. Robertson --" That's Pat -- that's the head of</p> <p>2 PERS?</p> <p>3 A Correct.</p> <p>4 Q "-- gave an overview of House Bill 211</p> <p>5 titled the Sunshine Act"; do you see that?</p> <p>6 A Yes.</p> <p>7 Q Were you there for that presentation?</p> <p>8 A Yes.</p> <p>9 Q And was it a document or was it a verbal</p> <p>10 presentation, if you recall?</p> <p>11 A My recollection is it was -- the overview</p> <p>12 was just verbal.</p> <p>13 Q And are you familiar with what the</p> <p>14 Sunshine Act is?</p> <p>15 A Yes.</p> <p>16 Q And what is it?</p> <p>17 A This was a bill that was passed to</p> <p>18 basically require that the Attorney General work</p> <p>19 together with agencies when bringing cases on the</p> <p>20 agency's behalf and that the -- our interpretation</p> <p>21 is that the agency will have to --</p> <p>22 MR. HARNES: Could I interrupt for just a</p> <p>23 second? I want to make sure that we're not -- could</p> <p>24 I have -- I want to go off the record because this</p> <p>25 is obviously a legal issue, and I'd like to discuss</p>
<p style="text-align: right;">114</p> <p>1 (Exhibit 47 was marked for</p> <p>2 identification by the court reporter.)</p> <p>3 BY MS. BRETAN:</p> <p>4 Q Ms. Tingle, do you recognize this</p> <p>5 document?</p> <p>6 A I do.</p> <p>7 Q And what is it?</p> <p>8 A These are the minutes from the June 26,</p> <p>9 2012, meeting of the board of trustees of PERS.</p> <p>10 Q And were you present at this meeting?</p> <p>11 A Yes.</p> <p>12 Q If you turn to, I guess, page 11 of the</p> <p>13 minutes Bates-labeled MSPERS 9003, that's another</p> <p>14 litigation report similar to the ones we've seen in</p> <p>15 the board minutes?</p> <p>16 A Yes.</p> <p>17 Q And you can take a minute to look through</p> <p>18 the report. If you turn to the next page when</p> <p>19 you're ready, there's, again, a list of securities</p> <p>20 litigation cases.</p> <p>21 A Yes.</p> <p>22 Q And do you recall whether there was</p> <p>23 additional information about those cases provided?</p> <p>24 A I -- I don't recall.</p> <p>25 Q And then at the bottom there it says,</p>	<p style="text-align: right;">116</p> <p>1 the basis of the witness's opinion before she</p> <p>2 testifies.</p> <p>3 MS. BRETAN: Sorry. I'm not asking --</p> <p>4 Q Is Ms. Robertson a lawyer?</p> <p>5 A No.</p> <p>6 Q Okay. And she provided an overview?</p> <p>7 A Yes.</p> <p>8 Q And --</p> <p>9 MR. HARNES: I'm still going to ask her</p> <p>10 the basis of what happened, and you can answer her</p> <p>11 questions -- you can ask her your questions, but I'm</p> <p>12 going to find out the genesis of -- because we are</p> <p>13 talking about a legal interpretation. There was a</p> <p>14 memo from -- as this exhibit reflects, from the AG's</p> <p>15 office and I'm going to ask the witness questions</p> <p>16 related to whether this is privileged or not.</p> <p>17 MS. BRETAN: We can go off the record.</p> <p>18 MR. HARNES: I mean, you can dispute</p> <p>19 whatever you want.</p> <p>20 THE VIDEOGRAPHER: Just one moment. Put</p> <p>21 your microphone on the table, if you would, ma'am.</p> <p>22 MR. HARNES: I've already done -- oh.</p> <p>23 THE VIDEOGRAPHER: Going off the record,</p> <p>24 the time is 5:06.</p> <p>25 (Whereupon, counsel and the witness left</p>

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">117</p> <p>1 the deposition room at 5:06 p.m. and 2 returned at 5:09 p.m..) 3 THE VIDEOGRAPHER: Back on the record. 4 The time is 5:09. 5 BY MS. BRETAN: 6 Q During the break did you speak with anyone 7 about the substance of your testimony here today? 8 A My counsel. 9 Q And what did you discuss? 10 A The response to your question regarding 11 the Sunshine bill -- Act -- sorry -- Sunshine Act 12 and our interpretation -- our, as in PERS, the 13 agency's, interpretation of that act. 14 Q What is PERS' interpretation of that act? 15 A The agency's interpretation is that the 16 Attorney General will work in concert with the 17 agency and the agency -- before bringing legal 18 action on our behalf and that the agency will have 19 to approve or disapprove of that action. 20 MR. HARNES: I want to make the record 21 clear that the conference was with respect to 22 privileged -- whether privilege existed and whether 23 the opinion of the Attorney General -- the opinion 24 that Mrs. Tingle just testified was relayed to her 25 by counsel or had the providence in any way of</p>	<p style="text-align: right;">119</p> <p>1 synopsis, their summary of the bill. So, no, it -- 2 to my knowledge it is not -- it is public record. 3 BY MS. BRETAN: 4 Q Do you know if that memo has been produced 5 in this action? 6 A I -- I don't know. 7 MS. BRETAN: Counsel, we'd ask that that 8 memo be produced. 9 THE VIDEOGRAPHER: Counsel, could you 10 please put your mic on? 11 MR. HARNES: It mischaracterize -- 12 THE VIDEOGRAPHER: I can't hear you. 13 Could you put your mic on? 14 MR. HARNES: Oh, I'm sorry. 15 THE VIDEOGRAPHER: Thank you. Thanks. 16 MR. HARNES: This witness, who is a 17 nonlawyer -- I've allowed her to answer the question 18 as to whether it's privileged or not. I don't think 19 it's within her ken to make a determination whether 20 a document is privileged or not, and I also think 21 it's way beyond the scope of about what she's here 22 to testify, but I haven't -- 23 BY MS. BRETAN: 24 Q What's your -- 25 MR. HARNES: -- reserved any objection.</p>
<p style="text-align: right;">118</p> <p>1 advice given to her by counsel. The obvious answer 2 -- the answer may be self-evident from the fact that 3 I have allowed her to testify. So I want the record 4 to be clear. I don't want any suggestion that I was 5 coaching the witness or was asking whether -- 6 whether I liked the answer or not. The discussion 7 was the providence of the opinion and to what extent 8 it revealed attorney-client confidences. And, 9 Ms. Tingle, if I've said anything inaccurate, feel 10 free to correct the record. 11 THE WITNESS: No, that's correct. 12 MR. HARNES: Okay. 13 BY MS. BRETAN: 14 Q And was the memorandum a privileged 15 memorandum, an attorney-client confidence? 16 MR. HARNES: I'm going to object to that. 17 THE WITNESS: The memo issued by the 18 Attorney General's office? 19 BY MS. BRETAN: 20 Q The opinion. 21 A No, it -- I'm sorry. 22 MR. HARNES: It's a memo. It's been -- I 23 object to the characterization of it as an opinion. 24 THE WITNESS: It's -- it's a memo that was 25 issued by the Attorney General's office with their</p>	<p style="text-align: right;">120</p> <p>1 If it is publicly available and if we make the 2 determination that it is not privileged, we will 3 produce it. 4 BY MS. BRETAN: 5 Q What's your understanding of the Sunshine 6 Act? You talked about PERS. What's your 7 understanding of -- 8 A My understanding is in line with the 9 agency's understanding, that it is -- it is designed 10 to have agency -- state agencies and the Attorney 11 General's office work together to make decisions 12 about litigation. 13 Q And are those decisions the decisions like 14 who was counsel in the litigation? 15 A No, it would be whether or not to pursue 16 litigation, period, not -- not beyond that. It's 17 the Attorney General's purview. 18 Q I can't remember if we -- I think we were 19 in the middle of discussing this when we took the 20 break, but the minutes reflect that Ms. Robertson 21 gave an overview of the bill. I can't recall what 22 your answer was. Was it that -- was it an oral 23 presentation or a document? 24 A My recollection was it was just an oral 25 summary of the bill itself.</p>

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">121</p> <p>1 Q Do you know if the Sunshine Act has</p> <p>2 provisions related to the fees that counsel --</p> <p>3 outside counsel can charge in contingency contracts?</p> <p>4 A I -- I don't know. I'm not that familiar</p> <p>5 with it other than just -- and -- in the</p> <p>6 decision-making process. So I don't -- I don't</p> <p>7 recall from the bill itself anything about these.</p> <p>8 Q Are you aware that the bill -- it's law</p> <p>9 now; is that right?</p> <p>10 A Correct.</p> <p>11 Q And that law applies to contracts with</p> <p>12 outside counsel for the securities litigation; is</p> <p>13 that -- is that accurate?</p> <p>14 MR. HARNES: Are you asking her what her</p> <p>15 understanding of the law is?</p> <p>16 BY MS. BRETAN:</p> <p>17 Q Your understanding.</p> <p>18 MR. HARNES: Thank you.</p> <p>19 THE WITNESS: Yes.</p> <p>20 BY MS. BRETAN:</p> <p>21 Q And are you aware that the bill has a cap</p> <p>22 on fees for contingency contracts of \$50 million?</p> <p>23 A Yes, I believe that was -- that is</p> <p>24 included in this bill, so yes.</p> <p>25 Q Do you know why this bill was introduced?</p>	<p style="text-align: right;">123</p> <p>1 as of the 1st of January of 2012 for the investment</p> <p>2 department at PERS.</p> <p>3 Q And do you recall when, prior to this -- I</p> <p>4 guess this is as of 11/20/12 -- when -- was this</p> <p>5 applicable to the prior year?</p> <p>6 A It would have -- we have revised this</p> <p>7 policy over time and in some cases changed some of</p> <p>8 the time frames, but this would have been the one</p> <p>9 from January 1st going forward. So there were</p> <p>10 previous ones.</p> <p>11 Q Okay. And what happens -- and this is --</p> <p>12 this policy reflects what -- how records are</p> <p>13 retained by your department?</p> <p>14 A Correct.</p> <p>15 Q Okay. So what happens when there's a</p> <p>16 litigation?</p> <p>17 A If -- as soon as we become aware of a</p> <p>18 litigation -- an ongoing litigation, we retain any</p> <p>19 -- any documents. The correspondence files are</p> <p>20 retained permanently and the contracts are retained</p> <p>21 permanently. The custodial bank information is</p> <p>22 online permanently for us. So the rest of this</p> <p>23 information we hold. Basically, if there is a</p> <p>24 litigation that we're aware of, we hold any emails.</p> <p>25 We hold any -- anything that has to do with that</p>
<p style="text-align: right;">122</p> <p>1 Were you aware of issues related to contingency</p> <p>2 contracts with outside counsel?</p> <p>3 A No. I don't -- I don't pretend to get</p> <p>4 into the heads of our legislature, but I know that</p> <p>5 the Attorney General has pursued litigation not just</p> <p>6 on behalf of PERS, but on behalf of the state in</p> <p>7 general, and there were some, I guess, concerns</p> <p>8 about the fees that were paid. I -- that's just my</p> <p>9 speculation.</p> <p>10 Q And did the concerns involve contingency</p> <p>11 contracts going to lawyers who had contributed to</p> <p>12 the election campaigns of the Attorney General?</p> <p>13 A I -- I have no knowledge of that. I don't</p> <p>14 know if that was -- if that was specifically</p> <p>15 addressed or identified. There are -- there was no</p> <p>16 -- to my recollection, no prohibition within this</p> <p>17 bill of campaign contributions or anything along</p> <p>18 those lines. So I don't know if that was part of</p> <p>19 this -- part of the reason for this bill.</p> <p>20 (Exhibit 48 was marked for</p> <p>21 identification by the court reporter.)</p> <p>22 BY MS. BRETAN:</p> <p>23 Q We've just marked as Exhibit 48 -- well,</p> <p>24 let me ask you: Do you recognize this document?</p> <p>25 A Yes, this is the records retention policy</p>	<p style="text-align: right;">124</p> <p>1 litigation. This is more a broad-based policy.</p> <p>2 Q And when you say that you're "aware of,"</p> <p>3 what do you mean -- a litigation that you're "aware</p> <p>4 of," what do you mean?</p> <p>5 A The Attorney General's office notifies us</p> <p>6 primarily through these board reports. So we find</p> <p>7 out every other month cases that we're involved in</p> <p>8 unless they specifically reach out to either myself</p> <p>9 or our in-house counsel to make us aware of a case</p> <p>10 that has started; otherwise, we don't really</p> <p>11 communicate with the Attorney General's office</p> <p>12 related to these cases.</p> <p>13 Q So, then, that's -- that would be when</p> <p>14 it's reported to the board that PERS will be seeking</p> <p>15 lead plaintiff status; is that right?</p> <p>16 A Generally we are notified. The litigation</p> <p>17 report contains cases in which we either are lead</p> <p>18 plaintiff or we're co-lead plaintiff or we're class</p> <p>19 representative, something where we're actually</p> <p>20 involved in litigation. As far as the -- we are not</p> <p>21 always notified when we're seeking lead plaintiff</p> <p>22 designation because it might or might not happen, I</p> <p>23 suppose, but we -- the communication is -- is</p> <p>24 primarily for -- in preparation for these board</p> <p>25 meetings.</p>

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">125</p> <p>1 Q Okay. And then looking at Exhibit 48, it</p> <p>2 says, "Class Action Filings."</p> <p>3 A Yes.</p> <p>4 Q "Open claims should be retained until</p> <p>5 settlement is received. Settle -- claims will be</p> <p>6 scanned and retained three years." Is -- are there</p> <p>7 files with class action filings at PERS?</p> <p>8 A Yes.</p> <p>9 Q And do you keep those?</p> <p>10 A Yes, my department does.</p> <p>11 Q And what are those? Are those everything</p> <p>12 that's filed in a -- in a class action that PERS is</p> <p>13 participating in?</p> <p>14 A No. It has nothing to do with, for</p> <p>15 example, this case and this sort of document. These</p> <p>16 are where PERS is a participant in a class -- in any</p> <p>17 class action and a settlement has been reached and</p> <p>18 the claims administrator has sent out the claim</p> <p>19 forms and we have filed our -- this is the filings</p> <p>20 for our -- our part of the settlement -- of any</p> <p>21 settlement of any class action that we happen to be</p> <p>22 in. So this is where we file claim forms. We get</p> <p>23 our money back and we keep all the documentation.</p> <p>24 Q I see. So claims that PERS was making as</p> <p>25 part of a class member?</p>	<p style="text-align: right;">127</p> <p>1 A Yes.</p> <p>2 Q And who would have done that search?</p> <p>3 A Charles Nielsen on my staff and myself and</p> <p>4 Elaine Kyzer would all have gone through</p> <p>5 correspondence, our hard-copy correspondence.</p> <p>6 Charles actually produced the -- the transactions</p> <p>7 that were requested, and Elaine keeps copies of all</p> <p>8 of the management agreements. So those were all</p> <p>9 provided there, and then email searches were done,</p> <p>10 actually, by counsel for us. So ...</p> <p>11 MS. BRETAN: Okay. So I'd like to go to</p> <p>12 Exhibit 23, previously marked Exhibit 23. I'm not</p> <p>13 sure if it's in there.</p> <p>14 THE WITNESS: I don't think I have that</p> <p>15 one.</p> <p>16 THE REPORTER: I have to go get it.</p> <p>17 BY MS. BRETAN:</p> <p>18 Q Exhibit 23 -- are you familiar with</p> <p>19 Exhibit 23?</p> <p>20 A No.</p> <p>21 Q Exhibit 23 are "Responses and Objections</p> <p>22 to Diamond Foods' First Set of Interrogatories to</p> <p>23 Lead Plaintiff"; do you see that?</p> <p>24 A Yes, I see that.</p> <p>25 Q And then just turning to the objections</p>
<p style="text-align: right;">126</p> <p>1 A Correct.</p> <p>2 Q And that's different than when PERS is a</p> <p>3 litigant --</p> <p>4 A Yes.</p> <p>5 Q -- a co-lead plaintiff, for example?</p> <p>6 A Correct.</p> <p>7 Q Do you have files about the litigation</p> <p>8 that are kept separately from --</p> <p>9 A If it's a case where we do set up files</p> <p>10 for all the cases, and generally if the Attorney</p> <p>11 General's office or if our counsel sends us</p> <p>12 documents like a 30(b)(6) document, usually we</p> <p>13 get -- or at least I get this and the -- whatever,</p> <p>14 and that might even be what this is, whatever is</p> <p>15 asking for a discovery document. So that's about</p> <p>16 the extent of any legal documents that I get.</p> <p>17 Q And are you aware that there were document</p> <p>18 requests from Diamond Foods to Lead Plaintiff in</p> <p>19 this action?</p> <p>20 A Yes.</p> <p>21 Q And would these files listed on the</p> <p>22 records retention policy be among the files reviewed</p> <p>23 for purposes of producing documents --</p> <p>24 A Yes.</p> <p>25 Q -- that were responsive?</p>	<p style="text-align: right;">128</p> <p>1 and responses to interrogatory number one,</p> <p>2 interrogatory number one is that the -- is at the</p> <p>3 bottom of page 2; do you see that?</p> <p>4 A Yes.</p> <p>5 Q And -- and that interrogatory asked to</p> <p>6 "Describe in detail all representations,</p> <p>7 information, recommendations or data upon which</p> <p>8 you," being lead plaintiff, "relied in making each</p> <p>9 purchase, acquisition, sale, transfer or other</p> <p>10 transactions in Diamond securities set forth in</p> <p>11 Exhibit B to your court questionnaire to lead</p> <p>12 plaintiff's candidate filed February 9th, 2012, in</p> <p>13 this matter of the questionnaire"; do you see that?</p> <p>14 A Yes.</p> <p>15 Q So effectively we were seeking information</p> <p>16 regarding what PERS was relying on in making the</p> <p>17 purchases and sales of Diamond Foods; do you see</p> <p>18 that?</p> <p>19 MR. HARNES: I'm going to --</p> <p>20 THE WITNESS: Yes.</p> <p>21 MR. HARNES: Is that a question?</p> <p>22 BY MS. BRETAN:</p> <p>23 Q Do you agree? Is that fair?</p> <p>24 A Yes.</p> <p>25 Q And in response to the interrogatory, line</p>

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">129</p> <p>1 five and a half there, it says, "Subject to and 2 without waiving the foregoing objections, Lead 3 Plaintiff responds that Diamond securities traded in 4 an efficient market and Lead Plaintiff intends to 5 rely on the fraud-on-the-market presumption of 6 reliance"; do you see that? 7 A Yes. 8 Q Did anyone consult -- you're the -- your 9 primary responsibility is the investments of MPERS, 10 correct? 11 A Yes. 12 Q Did anybody consult you about whether 13 there was an efficient -- Diamond securities traded 14 in an efficient market? 15 A No. 16 Q Did anybody consult you about whether 17 MPERS could rely on a fraud-on-the-market in this 18 case? 19 A No. 20 Q Did anyone ask -- did you ask Artisan for 21 their rationale behind making the trades in Diamond 22 securities? 23 A No. 24 Q Do you know if anyone else asked Artisan 25 the rationale for making the trades in the Diamond</p>	<p style="text-align: right;">131</p> <p>1 asserted in the interrogatory, that "reliance" is a 2 term of art under the law that calls for a legal 3 conclusion. You can ask this witness any facts, but 4 I think it's improper for her to testify as to a 5 legal conclusion, particularly since she's here to 6 testify as to facts. But in any event, she can 7 answer the question. 8 THE WITNESS: Okay. I'm sorry. Now would 9 you repeat the question? 10 BY MS. BRETAN: 11 Q My question was whether PERS would have 12 relied on Artisan Partners in making investment 13 decisions -- to make the investment decisions with 14 respect to Diamond Foods. 15 A Yes. 16 Q 24. 17 A What number is it? 18 Q Do you recognize what's been marked as 19 Exhibit 24? 20 A Yes. Oh, no. I'm sorry. I don't. Let 21 me -- let me look at it. I have Exhibit 24. I do 22 not recognize Exhibit 24. 23 Q And when you say you "have Exhibit 24" -- 24 A In front of me. 25 Q Oh, you have it in front of you right now?</p>
<p style="text-align: right;">130</p> <p>1 securities? 2 A I'm not aware that anyone did. 3 Q Do you know if anyone asked Artisan 4 whether Diamond securities traded in an efficient 5 market? 6 A I'm not aware of it. 7 Q If you look at interrogatory number two, 8 that's also on page 3; do you see that? 9 A Yes. 10 Q Interrogatory number two asks to "Identify 11 all persons on whom you relied in making any 12 investment decision regarding Diamond securities, 13 including with respect to all of the transactions in 14 Diamond securities set forth in Exhibit B to the 15 questionnaire previously defined"; do you see that? 16 A Yes. 17 Q And in looking through the response to 18 interrogatory number two, is it fair to say that 19 Artisan Partners is not listed there? 20 A That is fair to say. 21 Q And would PERS have relied on Artisan 22 Partners in making investment decisions with respect 23 to Diamond Foods? 24 MR. HARNES: I'm going to object to the 25 question and assert the same objection that's</p>	<p style="text-align: right;">132</p> <p>1 A I have it in front of me. 2 Q You don't recall seeing it before? 3 A That is correct. 4 Q And Exhibit 24 is "Lead Plaintiff's 5 Supplemental Responses and Objections to Diamond 6 Foods' First Set of Interrogatories"; is that right? 7 A Yes. 8 Q And turning to interrogatory number two -- 9 A Yes. 10 Q -- the same question which is asked to 11 "Identify all persons on whom you relied on making 12 any investment decision regarding Diamond securities 13 including with respect to all the transactions in 14 Diamond securities set forth in Exhibit B to the 15 questionnaire"; do you see that? 16 A Yes. 17 Q And now interrogatory number two, if you 18 look at line 14, could you read the sentence 19 starting with "Lead Plaintiff"? 20 A "Lead Plaintiff further responds that 21 Artisan Partners Limited Partnership, including but 22 not limited to, James Hammel and Andrew Stephens, 23 Acadian Asset Management, Inc. and Wellington 24 Management Company, LLP, acted as an investment 25 advisor in connection with the purchase --" oh, I'm</p>


LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">133</p> <p>1 sorry "-- with such purchases and sales -- executed</p> <p>2 them."</p> <p>3 Q "And executed them."</p> <p>4 A Oh, I'm sorry. "And executed them."</p> <p>5 Q And that's consistent with your</p> <p>6 understanding that Artisan executed the sales in</p> <p>7 Diamond during the class period?</p> <p>8 A That is correct.</p> <p>9 MS. BRETAN: Okay. Thank you. If we</p> <p>10 could just take a break.</p> <p>11 THE VIDEOGRAPHER: Just one second. I'll</p> <p>12 get us off the record. We're going off the record.</p> <p>13 The time is 5:33 p.m.</p> <p>14 (Recess.)</p> <p>15 THE VIDEOGRAPHER: We're back on the</p> <p>16 record. The time is 5:39 p.m. Go ahead.</p> <p>17 BY MS. BRETAN:</p> <p>18 Q Ms. Tingle, we've talked about the fact</p> <p>19 that PERS' shares in Diamond were sold in</p> <p>20 November 2011; is that --</p> <p>21 A Yes.</p> <p>22 Q And are you aware that in this litigation</p> <p>23 that -- and the position was zeroed out, right?</p> <p>24 A Yes.</p> <p>25 Q There were no more holdings after that</p>	<p style="text-align: right;">135</p> <p>1 testify to specific limited areas, and you're asking</p> <p>2 her -- she's an investment analyst. You're asking</p> <p>3 her legal questions. Typical -- typicality is a</p> <p>4 legal term of art, and I'm sorry I'm sounding cranky</p> <p>5 because it's late in New York time, but, you know,</p> <p>6 I've just -- I've sat here and allowed you to ask</p> <p>7 every question, but I'm really -- it's just really</p> <p>8 improper. And if she has an opinion, she can go</p> <p>9 ahead, but it's -- it's just -- it's just really</p> <p>10 improper.</p> <p>11 THE WITNESS: I can't speculate on what</p> <p>12 other people were doing or whether they are -- or</p> <p>13 were in any different circumstance in PERS during</p> <p>14 that time.</p> <p>15 BY MS. BRETAN:</p> <p>16 Q Okay. In your role as chief investment</p> <p>17 officer at PERS, do you deal at all with whether</p> <p>18 PERS has been damaged by a particular investment --</p> <p>19 the damages PERS suffers with respect to its</p> <p>20 investments?</p> <p>21 A It's --</p> <p>22 MR. HARNES: I'm going to object to that</p> <p>23 question because, again, "damages" is a term of --</p> <p>24 legal term of art.</p> <p>25 THE WITNESS: Can you -- can you explain</p>
<p style="text-align: right;">134</p> <p>1 final sale in November. And are you aware that this</p> <p>2 -- the class period in this case extends beyond</p> <p>3 November of 2011?</p> <p>4 A Yes.</p> <p>5 Q And so would purport to cover people who</p> <p>6 were buying shares while PERS shares were being</p> <p>7 sold, buying Diamond shares while PERS was selling</p> <p>8 its shares?</p> <p>9 A Yes.</p> <p>10 Q And people who were buying shares in</p> <p>11 December after PERS had exited its position --</p> <p>12 A Yes.</p> <p>13 Q -- in Diamond?</p> <p>14 And into January --</p> <p>15 A Yes.</p> <p>16 Q -- 2012, after -- well after PERS had</p> <p>17 exited its position?</p> <p>18 Is it your understanding that -- is PERS</p> <p>19 in any different position than people who were --</p> <p>20 having exited in November than people who were</p> <p>21 buying in December or in January? Is PERS typical</p> <p>22 of people who would be buying in January and</p> <p>23 December?</p> <p>24 MR. HARNES: I'm going to object to that.</p> <p>25 I mean, this witness is here as a fact witness to</p>	<p style="text-align: right;">136</p> <p>1 what you're asking exactly or say it again? I'm not</p> <p>2 exactly sure I know what your question means.</p> <p>3 BY MS. BRETAN:</p> <p>4 Q Well, so PERS has submitted a loss</p> <p>5 calculation we looked at earlier with respect to its</p> <p>6 Diamond Foods transactions; do you recall that?</p> <p>7 A Yes.</p> <p>8 Q Is that loss calculation the same as</p> <p>9 damages to PERS?</p> <p>10 MR. HARNES: I'm going to have the same</p> <p>11 objection. This witness is not here -- it's a legal</p> <p>12 conclusion. She can answer if she -- if she can,</p> <p>13 but I'm sorry if I'm seeming that I'm losing</p> <p>14 patience.</p> <p>15 THE WITNESS: Damages and losses as</p> <p>16 calculated for these cases, that's the purview of</p> <p>17 the Attorney General's office; that's not anything</p> <p>18 PERS gets involved with.</p> <p>19 BY MS. BRETAN:</p> <p>20 Q Okay. At the beginning of today's</p> <p>21 deposition we talked a little bit about your prior</p> <p>22 deposition experience, and I think you said you</p> <p>23 testified in depositions before; is that right?</p> <p>24 A Yes.</p> <p>25 Q And some of those were securities class</p>

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">137</p> <p>1 action cases?</p> <p>2 A Correct.</p> <p>3 Q And you worked with outside counsel in the</p> <p>4 context of those cases?</p> <p>5 A Yes.</p> <p>6 Q And do you recall the names of any of the</p> <p>7 counsel that you worked with in those cases, the</p> <p>8 firm names?</p> <p>9 A The firms. We have worked with the</p> <p>10 Chitwood firm before. We have worked with Bernstein</p> <p>11 Litowitz, and I think that may be it.</p> <p>12 Q In your experience?</p> <p>13 A Yes, in my experience.</p> <p>14 Q And the Chitwood firm and Bernstein</p> <p>15 Litowitz, are those both firms that have monitoring</p> <p>16 agreements --</p> <p>17 A Yes.</p> <p>18 Q -- to your knowledge?</p> <p>19 And do you know whether the Chitwood firm</p> <p>20 or Bernstein Litowitz has donated to the political</p> <p>21 campaigns of Attorney General Jim Hood?</p> <p>22 A I do not know personally.</p> <p>23 Q Do you know whether the Chitwood firm or</p> <p>24 Bernstein Litowitz has donated to PACs that</p> <p>25 contribute to the campaign of Attorney General Jim</p>	<p style="text-align: right;">139</p> <p>1 REPORTER'S CERTIFICATION</p> <p>2</p> <p>3 I, Catherine A. Ryan, Certified Shorthand</p> <p>4 Reporter in and for the State of California, do</p> <p>5 hereby certify:</p> <p>6</p> <p>7 That the foregoing witness was by me duly</p> <p>8 sworn, that the deposition was then taken before me</p> <p>9 at the time and place herein set forth; that the</p> <p>10 testimony and proceedings were reported</p> <p>11 stenographically by me and later transcribed into</p> <p>12 typewriting under my direction; that the foregoing</p> <p>13 is a true record of the testimony and proceedings</p> <p>14 taken at that time.</p> <p>15</p> <p>16 IN WITNESS WHEREOF, I have subscribed my</p> <p>17 name this _____ day of _____,</p> <p>18</p> <p>19  <i>Catherine A. Ryan</i></p> <p>20</p> <p>21</p> <p>22</p> <p>23 Catherine A. Ryan, RMR, CRR, CSR No. 8239</p> <p>24</p> <p>25</p>
<p style="text-align: right;">138</p> <p>1 Hood?</p> <p>2 A I don't know. I don't have access to that</p> <p>3 information.</p> <p>4 MS. BRETAN: Thank you. That's all for</p> <p>5 me.</p> <p>6 THE VIDEOGRAPHER: Anything from anyone</p> <p>7 else? Okay. I'll make a closing statement, and</p> <p>8 then we'll get your orders for video and</p> <p>9 transcripts.</p> <p>10 MR. HARNES: Oh, we get to do closing</p> <p>11 statements?</p> <p>12 THE VIDEOGRAPHER: Pardon me?</p> <p>13 MR. HARNES: Nothing. I was just making a</p> <p>14 joke.</p> <p>15 THE VIDEOGRAPHER: I didn't hear you.</p> <p>16 MR. HARNES: I said: We get to make</p> <p>17 closing statements? No one told me.</p> <p>18 THE VIDEOGRAPHER: I do. Just a moment.</p> <p>19 This concludes tape number two and the end of the</p> <p>20 videotaped deposition of Lorrie Tingle. We're going</p> <p>21 off the record on April 3rd, 2013, and the time is</p> <p>22 5:46 p.m.</p> <p>23 (TIME NOTED: 5:46 p.m.)</p> <p>24</p> <p>25</p>	<p style="text-align: right;">140</p> <p>1 DEPOSITION ERRATA SHEET</p> <p>2</p> <p>3</p> <p>4 Our Assignment No. 508375</p> <p>5 Case Caption: IN RE DIAMOND FOODS, INC.</p> <p>6 SECURITIES</p> <p>7</p> <p>8 DECLARATION UNDER PENALTY OF PERJURY</p> <p>9 I declare under penalty of perjury that I have read the</p> <p>10 entire transcript of my Deposition taken in the</p> <p>11 captioned matter or the same has been read to me, and</p> <p>12 the same is true and accurate, save and except for</p> <p>13 changes and/or corrections, if any, as indicated by me</p> <p>14 on the DEPOSITION ERRATA SHEET hereof, with the</p> <p>15 understanding that I offer these changes as if still</p> <p>16 under oath.</p> <p>17</p> <p>18 Signed on the _____ day of _____, 20____.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

<p style="text-align: right;">141</p> <p>1 DEPOSITION ERRATA SHEET</p> <p>2 Page No. _____ Line No. _____ Change to: _____</p> <p>3 _____</p> <p>4 Reason for change: _____</p> <p>5 Page No. _____ Line No. _____ Change to: _____</p> <p>6 _____</p> <p>7 Reason for change: _____</p> <p>8 Page No. _____ Line No. _____ Change to: _____</p> <p>9 _____</p> <p>10 Reason for change: _____</p> <p>11 Page No. _____ Line No. _____ Change to: _____</p> <p>12 _____</p> <p>13 Reason for change: _____</p> <p>14 Page No. _____ Line No. _____ Change to: _____</p> <p>15 _____</p> <p>16 Reason for change: _____</p> <p>17 Page No. _____ Line No. _____ Change to: _____</p> <p>18 _____</p> <p>19 Reason for change: _____</p> <p>20 Page No. _____ Line No. _____ Change to: _____</p> <p>21 _____</p> <p>22 Reason for change: _____</p> <p>23 _____</p> <p>24 SIGNATURE: _____ DATE: _____</p> <p>25 LORRIE SMITH TINGLE</p>	
<p style="text-align: right;">142</p> <p>1 DEPOSITION ERRATA SHEET</p> <p>2 Page No. _____ Line No. _____ Change to: _____</p> <p>3 _____</p> <p>4 Reason for change: _____</p> <p>5 Page No. _____ Line No. _____ Change to: _____</p> <p>6 _____</p> <p>7 Reason for change: _____</p> <p>8 Page No. _____ Line No. _____ Change to: _____</p> <p>9 _____</p> <p>10 Reason for change: _____</p> <p>11 Page No. _____ Line No. _____ Change to: _____</p> <p>12 _____</p> <p>13 Reason for change: _____</p> <p>14 Page No. _____ Line No. _____ Change to: _____</p> <p>15 _____</p> <p>16 Reason for change: _____</p> <p>17 Page No. _____ Line No. _____ Change to: _____</p> <p>18 _____</p> <p>19 Reason for change: _____</p> <p>20 Page No. _____ Line No. _____ Change to: _____</p> <p>21 _____</p> <p>22 Reason for change: _____</p> <p>23 _____</p> <p>24 SIGNATURE: _____ DATE: _____</p> <p>25 LORRIE SMITH TINGLE</p>	

LORRIE SMITH TINGLE 30(b)(6)
IN RE: DIAMOND FOODS, INC.

April 3, 2013

Page 139

REPORTER'S CERTIFICATION

I, Catherine A. Ryan, Certified Shorthand
Reporter in and for the State of California, do
hereby certify:

That the foregoing witness was by me duly
sworn, that the deposition was then taken before me
at the time and place herein set forth; that the
testimony and proceedings were reported
stenographically by me and later transcribed into
typewriting under my direction; that the foregoing
is a true record of the testimony and proceedings
taken at that time.

IN WITNESS WHEREOF, I have subscribed my
name this 5 day of April, 2013.



Catherine A. Ryan

Catherine A. Ryan, RMR, CRR, CSR No. 8239

Exhibit 3 – Redacted Pages Filed Under Seal Pursuant to Court Order

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
1-4

<p>UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA SAN FRANCISCO DIVISION</p> <p>-----</p> <p>IN RE DIAMOND FOODS, INC. SECURITIES LITIGATION Case No. CV-11-05386-WHA</p> <p>-----</p> <p>Video examination of ANDREW STEPHENS, taken at the instance of Diamond Foods, Inc., under and pursuant to Rules 30(b)(6) and 45 of the Federal Rules of Civil Procedure, before JESSICA R. WAACK, Certified Realtime Reporter, Registered Diplomat Reporter, Certified Shorthand Reporter and Notary Public in and for the State of Wisconsin, at Brown & Jones Reporting, Inc., 735 North Water Street, Suite M185, Milwaukee, Wisconsin, on Thursday, April 4, 2013, commencing at 8:59 a.m. and concluding at 5:16 p.m.</p>	<p>Page 1</p> <p>1 INDEX</p> <p>2</p> <p>3 Examination: Page</p> <p>4 By Mr. Caloza..... 6</p> <p>4 By Ms. Igra..... 225</p> <p>5</p> <p>6 Exhibit Identified: Page</p> <p>7 No. 49 - Subpoena For Mr. Stephens..... 11</p> <p>7 No. 50 - March 26, 2013 Letter, From Joseph C. Wylie, II, to Alexis I. Caloza..... 18</p> <p>8 No. 51 - An In-Depth View of Artisan Growth Team Investment Philosophy and Process..... 29</p> <p>9 No. 52 - Artisan U.S. Mid-Cap Growth Strategy December 31, 2012, Fact Sheet..... 70</p> <p>10 No. 53 - Document Bates Stamped Nos. MSPERS 010175 Through MSPERS 010316..... 73</p> <p>11 No. 54 - Research Pitch Packet Bates Nos. AP0001440 Through AP0001448..... 83</p> <p>12 No. 55 - Printout of the Internal Research and Trading Note System Bates Stamped AP0001396 Through AP0001414..... 99</p> <p>13 No. 56 - Handwritten Notes Bates Nos. AP0001213 Through AP0001223..... 105</p> <p>14 No. 57 - Single Page Bates Stamped AP0001034 of Handwritten Notes..... 107</p> <p>15 No. 58 - PG Deal For Pringles Document Bates Stamped AP0000684 Through AP0000696..... 128</p> <p>16 No. 59 - Document Bates Stamped No. AP0001773..... 132</p> <p>17 No. 60 - Online Article From the Wall Street Journal Bates Stamped MSPERS 001573 to MSPERS 001575..... 154</p> <p>18 No. 61 - Document Bates Stamped AP0000333 to AP0000334..... 158</p> <p>19 No. 62 - Excel Sheet Bates Stamped AP0001774..... 178</p> <p>20 No. 63 - Document Bates Stamped AP331 to AP332..... 182</p> <p>21 No. 64 - Document Bates Stamped AP0001817 to AP0001818..... 183</p> <p>22 No. 65 - Document Bearing Bates Stamps AP352 Through AP366..... 191</p> <p>23 No. 66 - Document Bearing Bates Numbers AP336 Through AP347..... 194</p> <p>24 No. 67 - Document Bates Stamped AP1 Through AP16... 195</p> <p>25</p>
<p>Page 2</p> <p>1 APPEARANCES</p> <p>2 FENWICK & WEST LLP, by</p> <p>3 MR. ALEXIS I. CALOZA;</p> <p>4 MS. EMILY GISCHE,</p> <p>5 555 California Street, 12th Floor,</p> <p>6 San Francisco, California 94104,</p> <p>7 appeared on behalf of Diamond Foods, Inc.</p> <p>8</p> <p>9 K&L GATES LLP, by</p> <p>10 MR. JOSEPH C. WYLIE,</p> <p>11 70 West Madison Street, Suite 3100,</p> <p>12 Chicago, Illinois 60602-4207,</p> <p>13 appeared on behalf of Artisan Partners Limited</p> <p>14 Partnership.</p> <p>15</p> <p>16 ARTISAN PARTNERS LIMITED PARTNERSHIP, by</p> <p>17 MS. SARAH A. JOHNSON,</p> <p>18 875 East Wisconsin Avenue, Suite 800,</p> <p>19 Milwaukee, Wisconsin, 53202,</p> <p>20 appeared on behalf of Artisan Partners Limited</p> <p>21 Partnership and Mr. Andrew Stephens.</p> <p>22</p> <p>23 CHITWOOD HARLEY HARNES LLP, by</p> <p>24 MS. KRISSI T. GORE,</p> <p>25 2300 Promenade II,</p> <p>1230 Peachtree Street,</p> <p>Atlanta, Georgia 30309,</p> <p>appeared on behalf of Lead Plaintiff Mississippi Public</p> <p>Employees' Retirement System.</p> <p>SIDLEY AUSTIN LLP, by</p> <p>MS. NAOMI A. IGRA,</p> <p>555 California Street, Suite 2000,</p> <p>San Francisco, California 94104,</p> <p>appeared telephonically on behalf of Michael J. Mendes.</p> <p>HOGAN LOVELLS US LLP, by</p> <p>MR. AVI ROSENBLIT,</p> <p>3 Embarcadero Center, Suite 1500,</p> <p>San Francisco, California 94111,</p> <p>appeared telephonically on behalf of Steven M. Neil.</p> <p>ALSO PRESENT</p> <p>Mr. Dean Van Hoogen, Videographer.</p> <p>*****</p>	<p>Page 4</p> <p>1 INDEX CONT'D</p> <p>2 Exhibit Identified: Page</p> <p>3 No. 68 - Document Bearing Bates Numbers AP2188 Through AP2238..... 199</p> <p>4 No. 69 - Printout of a Spreadsheet Produced By Artisan to Diamond in Native Excel Format. 202</p> <p>5 No. 70 - Document Bates Stamped AP229 Through AP312..... 212</p> <p>6 No. 71 - Document Bates Stamped AP116 Through AP228..... 214</p> <p>7 No. 72 - Document Bearing Bates Stamps AP91 Through AP115..... 214</p> <p>8 No. 73 - Document Bearing Bates Stamps AP66 Through AP90..... 215</p> <p>9 No. 74 - Document Bearing Bates Stamps AP43 Through AP65..... 215</p> <p>10 No. 75 - Document Bearing Bates Stamp AP21 Through AP42..... 216</p> <p>11 No. 76 - Document Bearing Bates Numbers AP325 Through AP330..... 219</p> <p>12 No. 77 - Document Bearing Bates Stamps AP319 Through AP324..... 221</p> <p>13 No. 78 - Document Bearing Bates Numbers AP313 Through AP318..... 221</p> <p>14</p> <p>15 Disposition Of Original Exhibit/s:</p> <p>16 All original exhibits were included in the original transcript. Copies of exhibits were supplied to counsel upon request.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
5-8

<p style="text-align: right;">Page 5</p> <p>1 TRANSCRIPT OF PROCEEDINGS</p> <p>2</p> <p>3 THE VIDEOGRAPHER: This is Disc No. 1 to</p> <p>4 the video deposition of Andrew Stephens in the</p> <p>5 matter of Diamond Foods, Incorporated, Securities</p> <p>6 Litigation being heard before the U.S. District</p> <p>7 Court, Northern District of California, Case No.</p> <p>8 CV-11-5386.</p> <p>9 This deposition is being held at Brown &</p> <p>10 Jones Reporting on April 4th, 2013, at 8:59 a.m.</p> <p>11 My name is Dean Van Hoogen, and I am the</p> <p>12 videographer. The court reporter is Jessica</p> <p>13 Waack.</p> <p>14 Counsel, will you please introduce</p> <p>15 yourselves and affiliations, and the witness will</p> <p>16 be sworn.</p> <p>17 MR. CALOZA: Alexis Caloza, Fenwick &</p> <p>18 West, counsel for Diamond Foods, Incorporated.</p> <p>19 MS. GORE: Krissi Gore, Chitwood,</p> <p>20 Harley, Harnes, counsel for the plaintiffs.</p> <p>21 MR. WYLIE: Joseph Wylie, K&L Gates,</p> <p>22 counsel for the deponent.</p> <p>23 MS. JOHNSON: Sarah Johnson, counsel for</p> <p>24 Artisan Partners.</p> <p>25 MS. GISCHE: Emily Gische, counsel for</p>	<p style="text-align: right;">Page 7</p> <p>1 Michael Mendes left.)</p> <p>2 MR. ROSENBLIT: I'm sorry, Avi Rosenblit</p> <p>3 from Hogan Lovells representing Steven Neil.</p> <p>4 MR. CALOZA: Okay. Anyone else?</p> <p>5 BY MR. CALOZA:</p> <p>6 Q Mr. Stephens, do you understand that your</p> <p>7 testimony today is under oath just as if you were</p> <p>8 testifying in court?</p> <p>9 A Yes.</p> <p>10 Q And that -- do you understand that you have an</p> <p>11 obligation to testify truthfully?</p> <p>12 A Yes.</p> <p>13 Q The reporter will transcribe everything that is</p> <p>14 being said, so it's very important that you answer</p> <p>15 audibly. No shakes of the head or nods.</p> <p>16 (Naomi Igra for Michael Mendes from</p> <p>17 Sidley Austin joined.)</p> <p>18 BY MR. CALOZA:</p> <p>19 Q Do you understand -- let me just repeat that.</p> <p>20 MS. IGRA: Apologies for the technical</p> <p>21 trouble here.</p> <p>22 BY MR. CALOZA:</p> <p>23 Q Okay. It's important because the court reporter</p> <p>24 is transcribing everything that you answer my</p> <p>25 questions with an audible answer and not just a</p>
<p style="text-align: right;">Page 6</p> <p>1 Diamond Foods.</p> <p>2 *****</p> <p>3 ANDREW STEPHENS, called as a witness</p> <p>4 herein, having been first duly sworn on oath, was</p> <p>5 examined and testified as follows:</p> <p>6 EXAMINATION</p> <p>7 BY MR. CALOZA:</p> <p>8 Q Can you please state your full name for the</p> <p>9 record?</p> <p>10 A Andrew Craig Stephens.</p> <p>11 Q And could you state your current business address?</p> <p>12 A It's 875 East Wisconsin, Suite 800, Milwaukee,</p> <p>13 Wisconsin 53202.</p> <p>14 Q Have you ever been deposed before?</p> <p>15 A I have not.</p> <p>16 Q Okay. I'm just going to go through a few ground</p> <p>17 rules right now just at the outset.</p> <p>18 MR. CALOZA: I'm sorry, do we have any</p> <p>19 counsel on the phone?</p> <p>20 MS. IGRA: Yes, this is Naomi Igra from</p> <p>21 Sidley Austin representing Michael Mendes.</p> <p>22 MR. CALOZA: Anyone else?</p> <p>23 MR. ROSENBLIT: Yeah, Avi Rosenblit of</p> <p>24 Hogan Lovells representing --</p> <p>25 (Naomi Igra from Sidley Austin for</p>	<p style="text-align: right;">Page 8</p> <p>1 shake of the head or a nod. Do you understand?</p> <p>2 A Yes. Can't shake and nod at the same -- to</p> <p>3 speak --</p> <p>4 Q That's fine as long as there's an audible answer.</p> <p>5 A Also, to make it easier for the court reporter,</p> <p>6 please don't speak over me or, you know, answer</p> <p>7 questions until I'm done asking my question. Do</p> <p>8 you understand that?</p> <p>9 A Yes.</p> <p>10 Q Let me know if you don't understand a question,</p> <p>11 and, you know, I'll do my best to clarify, but if</p> <p>12 you answer, I'll assume that you understood the</p> <p>13 question. Do you understand?</p> <p>14 A Yes.</p> <p>15 Q Thank you. If you need a break, let me know. I</p> <p>16 can't promise that I will take a break</p> <p>17 immediately, but I will try to do so as soon as I</p> <p>18 get to a good stopping point. Do you understand?</p> <p>19 A Yes.</p> <p>20 Q I'm not going to ask you to guess or speculate as</p> <p>21 to any answers, but I am entitled to your best</p> <p>22 recollection. Do you understand?</p> <p>23 A Yes.</p> <p>24 Q Is there any reason why you cannot give your best</p> <p>25 testimony today?</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
9-12

<p style="text-align: right;">Page 9</p> <p>1 A No.</p> <p>2 Q Okay. Thank you. I'd like to start with your</p> <p>3 educational background. Do you have any post</p> <p>4 secondary education?</p> <p>5 A No -- yes, sorry. Yes, I have a bachelor of</p> <p>6 science degree from the University of Wisconsin in</p> <p>7 economics.</p> <p>8 Q And when did you receive that degree?</p> <p>9 A 1986.</p> <p>10 Q And did you do any graduate school education after</p> <p>11 that?</p> <p>12 A No.</p> <p>13 Q Do you have any other degrees?</p> <p>14 A No.</p> <p>15 Q What was your first -- what was your first job</p> <p>16 after college?</p> <p>17 A I was employed by Strong/Corneliuson Capital</p> <p>18 Management in Milwaukee.</p> <p>19 Q And when was that, what dates?</p> <p>20 A That was -- I started in January of 1987, and I</p> <p>21 was there until March of 1997.</p> <p>22 Q And what was your job title?</p> <p>23 A Through that period or --</p> <p>24 Q Through that period?</p> <p>25 A I had a number of different jobs. I started in an</p>	<p style="text-align: right;">Page 11</p> <p>1 MR. CALOZA: Okay. So as a -- let me</p> <p>2 start with something else.</p> <p>3 (Exhibit No. 49 is marked.)</p> <p>4 BY MR. CALOZA:</p> <p>5 Q Mr. Stephens, have you seen this document before?</p> <p>6 A No, I have not.</p> <p>7 Q Do you understand that you are testifying today as</p> <p>8 a witness -- a representative witness for Artisan</p> <p>9 Partners?</p> <p>10 A Yes.</p> <p>11 Q Could you take a look at Page 3 of the Exhibit A,</p> <p>12 so that would be the second-to-last page of</p> <p>13 Exhibit 49? Do you -- and it says "Deposition</p> <p>14 Topics." Do you see that?</p> <p>15 A Yes.</p> <p>16 Q Could you, please, just read those deposition</p> <p>17 topics?</p> <p>18 A "Any agreement or arrangement between you and</p> <p>19 MPERS." That's No. 1; No. 2, "All</p> <p>20 communication" --</p> <p>21 Q Let me -- let me do it this way. Could you read</p> <p>22 Deposition Topic No. 1 just -- do you see that it</p> <p>23 says, "Any agreement or arrangement between you</p> <p>24 and MPERS?"</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 10</p> <p>1 entry-level statistics and marketing position, and</p> <p>2 I left as a portfolio manager.</p> <p>3 Q Okay. And as a portfolio manager, what were your</p> <p>4 responsibilities?</p> <p>5 A I was responsible for managing the equities in a</p> <p>6 balanced mutual fund, making the purchase and sale</p> <p>7 decisions.</p> <p>8 Q Okay. Where did you go after you left that job?</p> <p>9 A To Artisan Partners.</p> <p>10 Q And what was your title when you started at</p> <p>11 Artisan?</p> <p>12 A Portfolio manager.</p> <p>13 Q Okay. And what were your job responsibilities as</p> <p>14 a portfolio manager?</p> <p>15 A The same, the -- making the research -- conducting</p> <p>16 the research and making the purchase and sale</p> <p>17 decisions for an equity portfolio.</p> <p>18 Q Is your current title still portfolio manager?</p> <p>19 A It is.</p> <p>20 Q Have your job responsibilities changed at all</p> <p>21 since you started in -- at Artisan?</p> <p>22 A No.</p> <p>23 Q Okay. And can you remind me when you said you</p> <p>24 started at Artisan?</p> <p>25 A March 1997.</p>	<p style="text-align: right;">Page 12</p> <p>1 Q Are you prepared to testify on that topic today?</p> <p>2 MR. WYLIE: I am going to object to the</p> <p>3 extent that you are asking him to testify on</p> <p>4 topics beyond what Artisan has agreed to</p> <p>5 designate the witness to testify on.</p> <p>6 MR. CALOZA: I understand your</p> <p>7 objection --</p> <p>8 MR. CALOZA: Can we go off the record</p> <p>9 for a second?</p> <p>10 THE VIDEOGRAPHER: We are off the record</p> <p>11 at 9:08 a.m.</p> <p>12 (Discussion held off the record.)</p> <p>13 THE VIDEOGRAPHER: We are back on the</p> <p>14 record at 9:10 a.m.</p> <p>15 MR. CALOZA: I believe counsel for</p> <p>16 Artisan wanted to state an objection for the</p> <p>17 record.</p> <p>18 MR. WYLIE: Yeah, pursuant to an</p> <p>19 agreement between myself and counsel for the</p> <p>20 defendant, Artisan and the deponent object to any</p> <p>21 questions that imply that there is an obligation</p> <p>22 for the deponent to testify as to matters outside</p> <p>23 the scope of what Artisan has agreed to designate</p> <p>24 a witness to testify to as set forth in the</p> <p>25 correspondence between myself and counsel for the</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
13-16

<p style="text-align: right;">Page 13</p> <p>1 defendant.</p> <p>2 MR. CALOZA: And I would just like to</p> <p>3 clarify that Diamond's position is that there was</p> <p>4 no agreement, but we will proceed and deal with</p> <p>5 that later, if necessary.</p> <p>6 BY MR. CALOZA:</p> <p>7 Q Mr. Stephens, going back to Exhibit 49, could you</p> <p>8 please read Deposition Topic No. 1?</p> <p>9 A No. 1 "Any agreement or arrangement between you</p> <p>10 and MPERS."</p> <p>11 Q And do you understand that MPERS refers to</p> <p>12 Mississippi Public Employees' Retirement System?</p> <p>13 A Yes.</p> <p>14 Q And I may refer to MPERS as MS PERS or PERS or</p> <p>15 MSPERS, and by that I mean to refer to Mississippi</p> <p>16 Public Employees' Retirement System. Do you</p> <p>17 understand that?</p> <p>18 A Yes.</p> <p>19 Q Are you prepared to testify on Topic No. 1 today?</p> <p>20 A Yes.</p> <p>21 Q Could you please read Topic No. 2? Do you see</p> <p>22 that it says, "All communications between you and</p> <p>23 MPERS, or any person on MPERS' behalf, regarding,</p> <p>24 relating to or referring to MPERS' investments,</p> <p>25 including but not limited to investments or</p>	<p style="text-align: right;">Page 15</p> <p>1 Diamond or P&G Securities, performed or provided</p> <p>2 by you to MPERS or any person on MPERS' behalf" --</p> <p>3 MR. WYLIE: Just to remind the witness,</p> <p>4 "you" here means Artisan Partners, not you</p> <p>5 personally.</p> <p>6 BY MR. CALOZA:</p> <p>7 Q -- "during the period June 5, 2010 to June 8,</p> <p>8 2012." Do you see that?</p> <p>9 A Yes.</p> <p>10 Q Mr. Stevens, are you prepared to testify on</p> <p>11 Deposition Topic No. 4 today?</p> <p>12 A Yes, to the best of my ability.</p> <p>13 Q Could you please read Deposition Topic No. 5? Do</p> <p>14 you see that it says, "Any analysis, research,</p> <p>15 investigation, review, commentary or other service</p> <p>16 conducted by you regarding any of Diamond's or</p> <p>17 P&G's public disclosures during the period June 5,</p> <p>18 2010 to June 8, 2012." Do you see that?</p> <p>19 A Yes.</p> <p>20 Q And are you prepared to testify as to Deposition</p> <p>21 Topic No. 5 today?</p> <p>22 A Not as it relates to P&G's public disclosures, no.</p> <p>23 Q If you turn the page to Page 4, Deposition Topic</p> <p>24 No. 6 says, "Any research or investigation of</p> <p>25 Diamond or P&G conducted by you, or by others</p>
<p style="text-align: right;">Page 14</p> <p>1 proposed investments in Diamond or P&G Securities,</p> <p>2 during the period June 5, 2010 to June 8, 2012."</p> <p>3 Do you see that?</p> <p>4 A Yes. To clarify, did you mean me, or you mean</p> <p>5 Artisan Partners?</p> <p>6 Q "You" means Artisan Partners. Do you understand</p> <p>7 that?</p> <p>8 A I understand the question.</p> <p>9 Q Are you prepared to testify as to Deposition Topic</p> <p>10 No. 2?</p> <p>11 A No.</p> <p>12 Q Could you please read Deposition Topic No. 3. Do</p> <p>13 you see that it says, "All purchases,</p> <p>14 acquisitions, sales, transfers or other</p> <p>15 transactions involving Diamond or P&G Securities,</p> <p>16 by MPERS or on MPERS' behalf during the period of</p> <p>17 June 5, 2010 to June 8, 2012, including the</p> <p>18 reasons for such transactions"?</p> <p>19 A Yes.</p> <p>20 Q Are you prepared to testify as to Deposition Topic</p> <p>21 No. 3 today?</p> <p>22 A Yes, to the best of my ability.</p> <p>23 Q Could you please read Deposition Topic No. 4? Do</p> <p>24 you see that it says, "Any research, investment</p> <p>25 advice, proxy voting or other service involving</p>	<p style="text-align: right;">Page 16</p> <p>1 acting on your behalf, during the period June 5,</p> <p>2 2010 to June 8, 2012." Do you see that?</p> <p>3 A Yes.</p> <p>4 Q And are you prepared to testify as to Deposition</p> <p>5 Topic No. 6?</p> <p>6 A You know, I have -- can I ask a clarifying</p> <p>7 question?</p> <p>8 Q Yes.</p> <p>9 A "You" as it relates to Artisan Partners is in</p> <p>10 reference to the strategy that I'm responsible</p> <p>11 for, not the overall Artisan Partners, the firm,</p> <p>12 correct?</p> <p>13 Q Well, "you" refers to Artisan Partners, but if you</p> <p>14 are only prepared to testify as to the strategy</p> <p>15 that you are responsible for, you can say that in</p> <p>16 your response.</p> <p>17 A Yes, only as it relates to the strategy that I</p> <p>18 am -- I am responsible for, and only as it relates</p> <p>19 to Diamond.</p> <p>20 Q And could you read Deposition Topic No. 7?</p> <p>21 A Yes.</p> <p>22 Q Do you see that it says, "Your organization</p> <p>23 structure," and, again, "your" refers to Artisan</p> <p>24 Partners?</p> <p>25 A Yes.</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
17-20

<p style="text-align: right;">Page 17</p> <p>1 Q Are you prepared to testify as to Deposition Topic</p> <p>2 No. 7?</p> <p>3 A Yes, to the best of my ability.</p> <p>4 Q Do you see Deposition Topic No. 8: "Documents</p> <p>5 regarding, relating to or referring to Diamond"?</p> <p>6 Do you see that?</p> <p>7 A Yes.</p> <p>8 Q And are you prepared to testify as to Deposition</p> <p>9 Topic No. 8?</p> <p>10 A Yes, as it relates to my strategy.</p> <p>11 Q Could you please read deposition -- or Topic</p> <p>12 No. 9? Do you see that it says, "MPERS'</p> <p>13 investment policies, goals, plans, objectives and</p> <p>14 restrictions"?</p> <p>15 A Yes, to my understanding, yes.</p> <p>16 Q And are you prepared to testify as to Deposition</p> <p>17 Topic No. 9?</p> <p>18 A Yeah, to my understanding, yes.</p> <p>19 Q And the last deposition topic is "MPERS' profits</p> <p>20 or losses from purchases, acquisitions, sales,</p> <p>21 transfers or other transactions involving Diamond</p> <p>22 or P&G Securities from January 1, 2009 to the</p> <p>23 present." Do you see that?</p> <p>24 A Yes.</p> <p>25 Q And are you prepared to testify as to Deposition</p>	<p style="text-align: right;">Page 19</p> <p>1 it says, "Subject to and without waiving its</p> <p>2 objections, Artisan Partners will produce a</p> <p>3 representative prepared to testify as to the</p> <p>4 following subjects"?</p> <p>5 A I'm sorry, where is that?</p> <p>6 Q It is at the bottom of the page right before</p> <p>7 Letter "A." Do you see it?</p> <p>8 A "Subject to and without waiving its objections,</p> <p>9 Artisan Partners will produce a representative</p> <p>10 prepared to testify as to the following subjects."</p> <p>11 Yes.</p> <p>12 Q And the first subject underneath that is "The</p> <p>13 manner in which Artisan Partners made decisions to</p> <p>14 purchase or sell securities in the MPERS account</p> <p>15 in which MPERS purchased or sold securities of</p> <p>16 Diamond, the MPERS mid-cap account." Do you see</p> <p>17 that?</p> <p>18 A Yes.</p> <p>19 Q And are you prepared to testify as to that topic</p> <p>20 today?</p> <p>21 A Yes.</p> <p>22 Q And below it, the second topic is, "The process by</p> <p>23 which the Artisan partners personnel responsible</p> <p>24 for the management of the MPERS mid-cap account</p> <p>25 gathered information related to Diamond and the</p>
<p style="text-align: right;">Page 18</p> <p>1 Topic 10?</p> <p>2 A I can only speak to No. 10 as it relates to the</p> <p>3 strategy that I manage for MPERS and only as it</p> <p>4 relates to Diamond Securities. Can I have a point</p> <p>5 of clarification? In the earlier references to</p> <p>6 "you," I would like to add in Nos. 1, 2 -- and I</p> <p>7 guess it was No. 4, that "you" relates just to my</p> <p>8 strategy.</p> <p>9 Q And I should have said this earlier, but if you</p> <p>10 need to clarify any previous answer, just let me</p> <p>11 know --</p> <p>12 A Okay.</p> <p>13 Q -- and then we can go back.</p> <p>14 A Okay.</p> <p>15 MR. CALOZA: Can you mark this as</p> <p>16 Deposition Exhibit No. 50?</p> <p>17 (Exhibit No. 50 is marked.)</p> <p>18 BY MR. CALOZA:</p> <p>19 Q Mr. Stevens, the court reporter has handed you</p> <p>20 what has been marked as Deposition Exhibit No. 50,</p> <p>21 and it is a March 26, 2013 letter, from Joseph C.</p> <p>22 Wylie, II, to Alexis I. Caloza. Have you seen</p> <p>23 this document before?</p> <p>24 A I have not.</p> <p>25 Q Could you please turn to Page 5? Do you see where</p>	<p style="text-align: right;">Page 20</p> <p>1 process by which Artisans Partners made the</p> <p>2 decisions to purchase and sell securities of</p> <p>3 Diamond in the MPERS mid-cap account." Do you see</p> <p>4 that?</p> <p>5 A Yes.</p> <p>6 Q Are you prepared to testify as to that topic</p> <p>7 today?</p> <p>8 A Yes.</p> <p>9 Q The next topic is "The manner in which Artisan</p> <p>10 Partners typically causes securities to be</p> <p>11 purchased or sold in accounts managed by the</p> <p>12 Artisan Partners personnel responsible for</p> <p>13 management of the MPERS mid-cap account." Do you</p> <p>14 see that?</p> <p>15 A Yes.</p> <p>16 Q And are you prepared to testify as to that today?</p> <p>17 A Yes.</p> <p>18 Q The next topic is "The manner in which Artisan</p> <p>19 Partners' personnel responsible for the management</p> <p>20 of the MPERS mid-cap account typically communicate</p> <p>21 with clients regarding purchases, holdings or</p> <p>22 sales of securities and such clients' investment</p> <p>23 accounts." Do you see that?</p> <p>24 A Yes.</p> <p>25 Q And are you prepared to testify as to that topic</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
21-24

<p style="text-align: right;">Page 21</p> <p>1 today?</p> <p>2 A Yes.</p> <p>3 Q And the final topic is "The identities and</p> <p>4 responsibilities of persons involved in decisions</p> <p>5 to purchase or sell securities in the MPERS</p> <p>6 mid-cap account." Do you see that?</p> <p>7 A Yes.</p> <p>8 Q And are you prepared to testify as to that topic</p> <p>9 today?</p> <p>10 A Yes.</p> <p>11 Q Okay. Thank you very much. Do you understand</p> <p>12 that you are testifying in a representative</p> <p>13 capacity today, not in an individual capacity?</p> <p>14 A Yes.</p> <p>15 Q Did you do anything to prepare for the deposition</p> <p>16 today? And I'm not asking you to reveal any</p> <p>17 attorney-client privileged communications.</p> <p>18 MR. WYLIE: Just for the record, I'll</p> <p>19 object to the extent the question purports to call</p> <p>20 for the disclosure of attorney-client</p> <p>21 communications.</p> <p>22 BY MR. CALOZA:</p> <p>23 Q You may answer.</p> <p>24 A Could you repeat the question, please?</p> <p>25 Q Did you do anything to prepare for the deposition</p>	<p style="text-align: right;">Page 23</p> <p>1 about coming to the deposition today?</p> <p>2 A No.</p> <p>3 Q And have you had any discussions with anyone at</p> <p>4 Artisan about coming to the deposition today?</p> <p>5 MR. WYLIE: Object to the extent it</p> <p>6 calls for the disclosure of attorney-client</p> <p>7 communications.</p> <p>8 BY MR. CALOZA:</p> <p>9 Q You may answer.</p> <p>10 A Yes.</p> <p>11 Q And who did you meet with, or who did you have a</p> <p>12 discussion with?</p> <p>13 MR. WYLIE: Object to the extent that it</p> <p>14 calls for the disclosure of attorney-client</p> <p>15 communications.</p> <p>16 THE WITNESS: My assistant.</p> <p>17 BY MR. CALOZA:</p> <p>18 Q And what did you discuss with your assistant?</p> <p>19 A The timing of my being out of the office, the</p> <p>20 scheduling of this appointment.</p> <p>21 Q Did you discuss the deposition with anyone else?</p> <p>22 A No.</p> <p>23 Q Mr. Stevens, a few moments ago you --</p> <p>24 A Can I -- can I clarify that?</p> <p>25 Q Yes.</p>
<p style="text-align: right;">Page 22</p> <p>1 today?</p> <p>2 A Yes.</p> <p>3 MR. WYLIE: Same objection.</p> <p>4 BY MR. CALOZA:</p> <p>5 Q What did you do?</p> <p>6 MR. WYLIE: Same objection.</p> <p>7 THE WITNESS: I read through some</p> <p>8 background information.</p> <p>9 BY MR. CALOZA:</p> <p>10 Q And what background information did you read?</p> <p>11 A The history of our internal notes.</p> <p>12 Q Anything else?</p> <p>13 A Our original research report.</p> <p>14 Q Anything else?</p> <p>15 A A brief review of the client guidelines.</p> <p>16 Q What do you mean by "client guidelines"?</p> <p>17 A The cont -- the original investment management</p> <p>18 contract.</p> <p>19 Q Did you review anything else?</p> <p>20 A No.</p> <p>21 Q Did you meet with anyone? And, again, I'm not</p> <p>22 asking you to reveal any attorney-client</p> <p>23 privileged communications.</p> <p>24 A No.</p> <p>25 Q Have you had any discussions with anyone at MPERS</p>	<p style="text-align: right;">Page 24</p> <p>1 A To the point of your objection, the</p> <p>2 attorney-client, does that include my attorneys?</p> <p>3 Q Yes. I'm not going to ask about the content of</p> <p>4 that. But if you met with your attorneys, you</p> <p>5 should say so.</p> <p>6 A Oh, yes, yes, sorry.</p> <p>7 Q And who was present at those discussions?</p> <p>8 A Sarah and Joe.</p> <p>9 Q And by "Sarah" --</p> <p>10 A Sarah Johnson and Joe Wylie.</p> <p>11 Q And who is Sarah Johnson -- Sarah Jones?</p> <p>12 A Sarah Johnson, our counsel.</p> <p>13 Q Okay. And she is the general counsel of Artisan,</p> <p>14 is that right?</p> <p>15 A Yes.</p> <p>16 Q Was anyone else present other than Sarah Johnson</p> <p>17 and Mr. Wylie?</p> <p>18 A No.</p> <p>19 Q Thank you. How would you characterize your</p> <p>20 investment strategy at Artisan?</p> <p>21 MR. WYLIE: Objection to the form. Are</p> <p>22 you asking about -- Artisan overall or his team?</p> <p>23 BY MR. CALOZA:</p> <p>24 Q I'm asking about your specific team.</p> <p>25 A And the question was, how would I characterize it?</p>



ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
25-28

<p style="text-align: right;">Page 25</p> <p>1 Q Right, how would you describe your investment 2 strategy? 3 A It's a -- as it relates to the MPERS account, it 4 is a long-only, public securities-based 5 equity-only growth-focused investment strategy in 6 a broadly diversified portfolio. 7 Q What do you mean by "growth focused"? 8 A We look -- we look for companies who are either 9 currently or likely to embark on what we call a 10 positive profit cycle, so we expect their profits 11 should accelerate, and, therefore, we define it as 12 growth, growing businesses -- growing -- 13 businesses with growing profit streams. 14 Q Other than this growth-focused investment strategy 15 that your team is responsible for, does Artisan 16 have any other general investment strategies? 17 MR. WYLIE: Objection. Form. Vague. 18 If you can answer. 19 BY MR. CALOZA: 20 Q Do you understand the question? 21 A I believe so. Yes, Artisan does have other 22 investment strategies. 23 Q And what other investment strategies does Artisan 24 have? 25 A I can't speak to them in specific detail because I</p>	<p style="text-align: right;">Page 27</p> <p>1 repository -- 2 A Uh-huh. 3 Q -- what information is shared among the teams? 4 A Only the information that's contributed by the 5 teams. It's a voluntary system. 6 Q And could you give examples of what information 7 might be shared in that central data repository? 8 A If someone had a -- if one of the teams had a 9 meeting with a company, they may write up notes 10 and contribute them to the system, similar to the 11 notes that you have in your -- in your exhibits, 12 or they may not. 13 Q If one team believes that a particular stock is a 14 good investment, does it typically share that 15 information with other investment teams? 16 A No. 17 Q Conversely, if another investment team believes 18 that a particular stock is a good investment, 19 would you expect that information to be shared 20 with your investment team? 21 A No. 22 Q Okay. Are Artisan's investment teams designed to 23 work autonomously from one another? 24 A Yes. 25 Q Why is that?</p>
<p style="text-align: right;">Page 26</p> <p>1 don't manage those portfolios, but we do have four 2 other teams at Artisan that manage equity 3 portfolios. 4 Q And just to the best of your ability, could you 5 briefly describe what those investment teams -- do 6 those investment teams have the same type of 7 investment strategy that your team has? 8 A To the best of my understanding, it is similar in 9 some ways and different in many ways. 10 Q Okay. How independent are those teams from one 11 another and from yours? 12 MR. WYLIE: Objection. Form. Vague. 13 If you can answer. 14 THE WITNESS: They're -- 15 BY MR. CALOZA: 16 Q Do you understand the question -- 17 A They're independent in their research and 18 decision-making, although we have a centralized 19 research repository where some data can be viewed 20 by all the teams. 21 Q And when you say "some data can be reviewed by all 22 the teams," is that -- is that all the research 23 that each investment team conducts, or what -- 24 strike the question. 25 When you refer to this centralized data</p>	<p style="text-align: right;">Page 28</p> <p>1 A Because we think that independence and autonomy in 2 investment decision-making produces the best 3 results. 4 Q Could -- why do you think it produces the best 5 results? 6 A Because it allows you to be highly focused in your 7 process and methodology and not be deluded by 8 others' approaches. 9 Q Does your investment strategy team manage 10 investments on behalf of MPERS? 11 A Yes. 12 Q To your knowledge, are there any other teams at 13 Artisan that manage investments on behalf of 14 MPERS? 15 A Yes. 16 Q Which teams are those? 17 A Our emerging markets team. 18 Q I'm sorry, did you say "emerging markets"? 19 A Emerging markets, yes. That's to the best of my 20 knowledge. 21 Q And are you aware of any coordination between the 22 emerging markets team and your investment team in 23 managing investments on behalf of MPERS? 24 A There's no official, coordinated cooperation. 25 MR. CALOZA: I'd like to mark this as</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.April 04, 2013
29-32

<p style="text-align: right;">Page 29</p> <p>1 Exhibit 51.</p> <p>2 (Exhibit No. 51 is marked.)</p> <p>3 BY MR. CALOZA:</p> <p>4 Q Mr. Stevens, you've been handed a document marked</p> <p>5 as Exhibit 51, and it says, "An In-Depth View of</p> <p>6 Artisan Growth Team Investment Philosophy and</p> <p>7 Process." Are you familiar with this document?</p> <p>8 A Yes, yes.</p> <p>9 Q What is it?</p> <p>10 A It's an overview of our investment philosophy and</p> <p>11 process and our key decision-makers.</p> <p>12 Q Can you please turn to Page 2, and do you see at</p> <p>13 the top of that page, it has a list of people</p> <p>14 associated -- it has a list of people under</p> <p>15 "Leadership" and lists analysts as well?</p> <p>16 A Yes.</p> <p>17 Q And are those all members of your investment</p> <p>18 strategy team?</p> <p>19 A Yes, they are.</p> <p>20 Q And are there any individuals who are part of your</p> <p>21 investment strategy team during the period between</p> <p>22 June 5, 2010, and June 8, 2012, who are not listed</p> <p>23 at the top of Page 2 of Exhibit 51?</p> <p>24 A I'm trying to -- I'm sorry, can you restate the</p> <p>25 question?</p>	<p style="text-align: right;">Page 31</p> <p>1 A Uh-huh.</p> <p>2 Q What role does he have in determining which</p> <p>3 investments are purchased and sold on behalf of</p> <p>4 MPERS?</p> <p>5 A Rod is a senior analyst. He has great input into</p> <p>6 the securities that we research, and he has -- he</p> <p>7 has great influence in the securities we decide to</p> <p>8 purchase and sell.</p> <p>9 Q Okay. What is his role? When you say "great</p> <p>10 input" and "great influence," what do you mean?</p> <p>11 A I should say significant.</p> <p>12 Q Okay.</p> <p>13 A Strike "great" and replace it with "significant."</p> <p>14 Q Okay. When you say significant input and</p> <p>15 influence, what do you mean by that?</p> <p>16 A Rod is responsible for covering the consumer</p> <p>17 sector for our research team, so all securities --</p> <p>18 all investment ideas that are in the consumer area</p> <p>19 of the economy, Rod will bring to our attention.</p> <p>20 He will do the fundamental research and present it</p> <p>21 to the team of other analysts and portfolio</p> <p>22 managers. He will give us a recommendation for</p> <p>23 purchase and sale.</p> <p>24 Q When you say "consumer" -- well, let me back up a</p> <p>25 second.</p>
<p style="text-align: right;">Page 30</p> <p>1 Q Are there any individuals who were part of the</p> <p>2 growth investment strategy team, your investment</p> <p>3 strategy team, during the period between June 5th,</p> <p>4 2010, and June 8, 2012, who are not listed on the</p> <p>5 top of Page 2 of Exhibit 51?</p> <p>6 A Yes, I believe there are.</p> <p>7 Q What are their names?</p> <p>8 A Well, it's missing our trading group, Jay Peters,</p> <p>9 Brenda Loeffel, Nick Costello and -- it's missing</p> <p>10 our administrative assistants, Kathy Eurich and</p> <p>11 Robin Johnson.</p> <p>12 Q And did any of those --</p> <p>13 A And I'm trying to think. It may be missing an</p> <p>14 analyst that -- that we've -- I can't -- I can't</p> <p>15 recall the time period when we hired some of our</p> <p>16 newer analysts, so they may be -- they may be</p> <p>17 missing. Jess Gelhar is not on here either,</p> <p>18 Jessica Gelhar, who is an associate analyst. I</p> <p>19 don't know her start date.</p> <p>20 Q Did any of the individuals you just named have any</p> <p>21 role in determining which investments were</p> <p>22 purchased and sold by Artisan on behalf of MPERS?</p> <p>23 A No.</p> <p>24 Q Do you see that under "analysts," it lists</p> <p>25 Roderick M. Brower?</p>	<p style="text-align: right;">Page 32</p> <p>1 Are you familiar with Diamond Foods,</p> <p>2 Inc.?</p> <p>3 A Yes.</p> <p>4 Q Do you know what type of products Diamond has?</p> <p>5 A Yes.</p> <p>6 Q What kind of products does Diamond sell?</p> <p>7 A Food products: nuts, snack foods.</p> <p>8 Q Would those fall into the consumer --</p> <p>9 A Yes, that's considered a consumer staple.</p> <p>10 Q So would Mr. Brower -- would Diamond fall into, I</p> <p>11 guess, Mr. Brower's purview in terms of</p> <p>12 researching potential investments?</p> <p>13 A Yes. As well as Martin Jochmann's and Jessica</p> <p>14 Gelhar's, but primarily Rod's.</p> <p>15 Q You mentioned Mr. Jochmann --</p> <p>16 A Uh-huh.</p> <p>17 Q -- is that correct? What role does he have in</p> <p>18 determining which investments are purchased and</p> <p>19 sold on behalf of MPERS?</p> <p>20 A A similar -- a similar role to Mr. Brower,</p> <p>21 although his area of coverage is slightly</p> <p>22 different.</p> <p>23 Q How is it different?</p> <p>24 A He's primarily involved in the healthcare sector</p> <p>25 and consumer services as opposed to consumer</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
33-36

<p style="text-align: right;">Page 33</p> <p>1 products, although there is some overlap.</p> <p>2 Q Okay. And you also mentioned Jessica Gelhar?</p> <p>3 A Yeah.</p> <p>4 Q She is not listed on the top of Page 2. What</p> <p>5 role -- or Page 2 of Exhibit 51. What role does</p> <p>6 she have in determining which investments are</p> <p>7 purchased and sold on behalf of MPERS?</p> <p>8 A At the time of the period in question or today?</p> <p>9 Q Let's start with the period in question, so</p> <p>10 June 5th, 2010, through June 8, 2012?</p> <p>11 A For the majority of that period, she had a -- she</p> <p>12 was in a support role to Rod Brower, Roderick</p> <p>13 Brower, as an associate analyst. So primarily</p> <p>14 fact gathering and reporting of information.</p> <p>15 Q Did she also support Mr. Jochmann?</p> <p>16 A She -- she might when -- on an as-needed basis.</p> <p>17 Q I'd like to turn to your investment team's</p> <p>18 strategy.</p> <p>19 A Uh-huh.</p> <p>20 Q If you look at the bottom of Page 2 under</p> <p>21 "Securities Selection," it says, "The first</p> <p>22 element of our process is securities selection."</p> <p>23 A Uh-huh.</p> <p>24 Q Do you see that?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 35</p> <p>1 level of confidence that they should be protected</p> <p>2 from economic uncertainty and from competitive</p> <p>3 uncertainty.</p> <p>4 Q Other than this, I guess, franchise</p> <p>5 characteristic, what other characteristics do you</p> <p>6 look for in selecting stocks for investment?</p> <p>7 A Well, that would be the first. The second would</p> <p>8 be that we believe they have a reasonably</p> <p>9 attractive valuation, and by that I mean, we can</p> <p>10 understand the assumptions that are used to get to</p> <p>11 what we determine to be the private market value</p> <p>12 of the business; in other words, what we would pay</p> <p>13 to take the business private.</p> <p>14 And, thirdly, the presence of conditions</p> <p>15 that would suggest the profits are either</p> <p>16 accelerating or will likely accelerate. Those are</p> <p>17 our three primary conditions.</p> <p>18 Q And who is -- who is responsible for identifying</p> <p>19 -- strike that.</p> <p>20 Who's responsible for researching</p> <p>21 whether a company has these franchise</p> <p>22 characteristics, a reasonable attractive -- a</p> <p>23 reasonably attractive valuation and, you know,</p> <p>24 whether there are conditions suggesting</p> <p>25 accelerating profits?</p>
<p style="text-align: right;">Page 34</p> <p>1 Q Could you describe what -- what you mean by</p> <p>2 "securities" -- or what -- could you just talk</p> <p>3 about the reference to "securities selection"?</p> <p>4 What does that mean?</p> <p>5 A It means determining which securities are</p> <p>6 appropriate for inclusion in the portfolio out of</p> <p>7 all securities available to be purchased.</p> <p>8 Q And what are the elements of that selection</p> <p>9 process, where does it begin?</p> <p>10 A It's --</p> <p>11 MR. WYLIE: I'll object. Compound.</p> <p>12 BY MR. CALOZA:</p> <p>13 Q Do you understand the question?</p> <p>14 A Um --</p> <p>15 Q Where does the investment process begin?</p> <p>16 A It begins with security selection.</p> <p>17 Q And what is the first step in selecting a security</p> <p>18 for investment?</p> <p>19 A Well, first of all, it's judgment -- it's judgment</p> <p>20 based, so it's to the best of our ability. It --</p> <p>21 it starts with trying to find businesses that we</p> <p>22 think are in some way franchise companies.</p> <p>23 And by "franchise," I mean those that</p> <p>24 have established markets or are established in</p> <p>25 their markets such that we have confidence or a</p>	<p style="text-align: right;">Page 36</p> <p>1 A Well, we all have that responsibility. Typically,</p> <p>2 one member of the team will bring it to the</p> <p>3 attention of the other members of the team. And</p> <p>4 from there, we will try to collectively build the</p> <p>5 case for those -- for those conditions being</p> <p>6 present.</p> <p>7 So in the case of a consumer stock like</p> <p>8 Diamond, typically, Rod Brower will bring it to</p> <p>9 our attention, but it may come from someone else.</p> <p>10 Q Do you have team meetings to discuss the stock?</p> <p>11 A Yes.</p> <p>12 Q How often do you typically meet to discuss a stock</p> <p>13 before determining to invest or not?</p> <p>14 A It varies. We meet -- we try to meet daily as a</p> <p>15 group. A particular stock may or may not be on</p> <p>16 the agenda at that daily meeting. It depends on</p> <p>17 our prior experience with the stock.</p> <p>18 If it's something that we're just</p> <p>19 learning for the first time, it will be a number</p> <p>20 of discussions before we make an investment,</p> <p>21 typically.</p> <p>22 Q Okay. Does the term "research qualified" have any</p> <p>23 significance to your investment team?</p> <p>24 A Yes.</p> <p>25 Q What does "research qualified" mean?</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
37-40

<p style="text-align: right;">Page 37</p> <p>1 A It means that we have gone through the process of 2 identifying the company. We've -- we've worked up 3 a -- typically, we've worked up a -- what we call 4 a research report, research packet, that's been 5 reviewed by the team. 6 There's been questions that have been 7 raised and answered, and, ultimately, the security 8 is voted on in an informal way by the portfolio 9 managers, and you need the support of at least two 10 portfolio managers for the idea before it becomes 11 research qualified. 12 Q Must a stock be research qualified before Artisan 13 invests in that stock? 14 A I can't speak to Artisan overall. 15 Q What about with respect to your specific 16 investment team? 17 A In general, that is true, yes. 18 Q Can you think of any examples where your team has 19 invested in a stock without first having it 20 research qualified by the team? 21 A The research qualification is an internal and 22 subjective judgment, but it's most often followed. 23 I can't think of a specific example off the top of 24 my head where it hasn't been. There -- there 25 probably is, though, but I can't think of it off</p>	<p style="text-align: right;">Page 39</p> <p>1 the appropriate capitalization rate. That is 2 probably the better way to say it. And, you know, 3 the most important thing when you're doing that is 4 that that business will be around in the future in 5 a similar form as it is today. Competition is 6 probably the most powerful force that we deal 7 with. And, therefore, we consider those four 8 characteristics to be barriers to competition to 9 help protect the value of the investment. So 10 that's why we consider it important. 11 Q And does your investment team -- can you think of 12 any examples where your investment team invested 13 in companies that you believed did not have those 14 franchise characteristics at the time of 15 investment? 16 A I can think of -- I cannot think of any examples 17 where we knowingly invested without those -- 18 without at least a few of those characteristics. 19 I should point out that we never have all of those 20 characteristics present. We're trying to get at 21 least a few of them. 22 Q How does -- how does your investment team estimate 23 private market value? 24 A You want the formula for it or... 25 Q I'll take the formula. But -- well, first, in</p>
<p style="text-align: right;">Page 38</p> <p>1 the top of my head. 2 Q Okay. And if a stock is research qualified, does 3 that mean that it has the three qualities you 4 mentioned earlier; that is, franchise 5 characteristics, evaluation that you understand in 6 terms of private market value and the prospect for 7 accelerating profits? 8 A To the best of our knowledge; however, we do say 9 even in this document that security selection is 10 all about trying to be right more often than we're 11 wrong. So, yes, we will be wrong. 12 Q Okay. But to the best of your understanding, you 13 know, at the time you -- your team determines a 14 stock to be research qualified, do you typically 15 believe that the stock contains those three 16 qualities? 17 A Yes. 18 Q I'd like to focus on those qualities for a second. 19 You previously mentioned franchise 20 characteristics. Why are franchise 21 characteristics important? 22 A Well, we believe that, you know, all -- all a 23 company is is a stream of cash flow, and, 24 ultimately, as public market investors, we're 25 trying to capitalize those cash flows -- or assign</p>	<p style="text-align: right;">Page 40</p> <p>1 general, you know, what -- what is the -- what is 2 the process for determining private market value? 3 A Yeah, consistent with my earlier statement, you 4 know, we believe that a company is a stream of 5 cash flows, and so our job is to, as much as we 6 can, accurately forecast the future potential of 7 those cash flows and then assign the correct 8 multiple to them. 9 In order to do that, we need to 10 understand what we believe the organic growth rate 11 of the business is over the acceleration period. 12 As I mentioned before, we're after accelerating 13 profits, so we want to understand the organic 14 growth rate of the business. We want to 15 understand the normalized free cash flow margins 16 of the business. We want to understand the 17 persistency and stability of the cash flow stream 18 through time, and we want to understand the 19 overall level of interest rate that's the 20 structure of the yield curve and the level of what 21 we call the risk-free rate. And from there, we 22 essentially use a modified dividend discount model 23 to capitalize those cash flows. 24 Q And just to clarify, is your team's estimate of 25 private market value the same thing as your</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
41-44

<p style="text-align: right;">Page 41</p> <p>1 estimate of intrinsic value?</p> <p>2 A We don't use the term "intrinsic value," so I</p> <p>3 wouldn't -- I wouldn't be one to opine on that.</p> <p>4 Q Okay. Is PMV -- does your team use PMV as an</p> <p>5 abbreviation for "private market value"?</p> <p>6 A Yes, it does.</p> <p>7 Q Now, you mentioned organic growth as one of the</p> <p>8 factors in determining private market value. What</p> <p>9 do you mean by "organic growth"?</p> <p>10 A In an idealized state, organic growth would simply</p> <p>11 be the unit growth times the price plus the</p> <p>12 incremental margins in the business. It's -- it</p> <p>13 is hard to strip that away in a real living</p> <p>14 organization, so -- but that would be in an</p> <p>15 idealized state.</p> <p>16 Q Okay. Where do you obtain the information</p> <p>17 necessary to determine private market value?</p> <p>18 A It comes from a number of places. It comes from</p> <p>19 forecasts that are created by other financial</p> <p>20 organizations. It comes from the internal</p> <p>21 forecast generated by the company itself. It</p> <p>22 comes from our understanding of the business and</p> <p>23 business conditions, and, ultimately, it comes</p> <p>24 from our analysts' synthesis of all of that</p> <p>25 information into their own projections for the</p>	<p style="text-align: right;">Page 43</p> <p>1 control premium that would be paid by someone who</p> <p>2 wants to take the business private. As public</p> <p>3 market investors, we wouldn't be expected to pay</p> <p>4 the control premium, so we would expect to be able</p> <p>5 to buy it at a discount to that price.</p> <p>6 Q Okay. What is the -- in your view, is the</p> <p>7 difference between the private market value that's</p> <p>8 calculated by your team and the market price, is</p> <p>9 that, generally, entirely attributable to this</p> <p>10 control premium?</p> <p>11 A I'm sorry. Re...</p> <p>12 Q You just testified that the private market value</p> <p>13 embodies a control premium that would be paid by</p> <p>14 someone who wants to take the business private.</p> <p>15 Does the discount between your estimate of private</p> <p>16 market value and the market price of the stock, is</p> <p>17 that entirely attributable to this control</p> <p>18 premium?</p> <p>19 A No, no. Private market values change far less</p> <p>20 than public security prices change. Many factors</p> <p>21 can influence the depth of the discount between</p> <p>22 the private market value and the -- and the -- and</p> <p>23 the public security price. My point was simply</p> <p>24 the reason that we look for a discount to private</p> <p>25 market value is intellectually we don't think we</p>
<p style="text-align: right;">Page 42</p> <p>1 business.</p> <p>2 Q And you mentioned forecasts created by other</p> <p>3 financial organizations. Could you give examples</p> <p>4 of that?</p> <p>5 A Yeah. It could be models that have been built by</p> <p>6 analysts on the -- on the south side -- you know,</p> <p>7 firms like -- as an example, Goldman Sachs or</p> <p>8 Merrill Lynch or places like that.</p> <p>9 Q I'd like you to take a look at Page 3 of</p> <p>10 Exhibit 51, and the first paragraph at the top of</p> <p>11 that page. Halfway through that paragraph it</p> <p>12 says, "We will consider for investment those</p> <p>13 companies that are selling at a discount to our</p> <p>14 estimate of private market value."</p> <p>15 A Uh-huh.</p> <p>16 Q Do you see that?</p> <p>17 A Yeah, yep.</p> <p>18 Q And do you agree with that statement?</p> <p>19 A I do with the added next sentence which says,</p> <p>20 "However, we are less interested in the absolute</p> <p>21 discount we pay than the potential for the private</p> <p>22 market value to rise over time."</p> <p>23 Q What is the importance of a discount to your</p> <p>24 team's estimate of private market value?</p> <p>25 A Well, the private market value is -- embodies a</p>	<p style="text-align: right;">Page 44</p> <p>1 should pay the control premium.</p> <p>2 Q Okay. I understand. What other factors might</p> <p>3 account for the difference between the private</p> <p>4 market value as calculated by your team and the</p> <p>5 market price? Do you understand that question?</p> <p>6 A Yes.</p> <p>7 MR. WYLIE: I will object to the extent</p> <p>8 it calls for speculation.</p> <p>9 BY MR. CALOZA:</p> <p>10 Q You may answer.</p> <p>11 A Well, of the factors that I discuss that determine</p> <p>12 a private -- or the way we calculate a private</p> <p>13 market value, the market from time to time as</p> <p>14 embodied by all other investors may have wildly</p> <p>15 different assumptions than we do. It may think</p> <p>16 the growth rate is much higher or lower than we</p> <p>17 do. It may think that the normalized free cash</p> <p>18 flow margins are much higher or lower than we do.</p> <p>19 It may think the persistence or stability of the</p> <p>20 cash flow stream is different. All we can go on</p> <p>21 is what we think -- what we have determined</p> <p>22 through our analysis those inputs are; and</p> <p>23 therefore, that determines our private market</p> <p>24 value.</p> <p>25 And the reason we use the term private</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
45-48

<p style="text-align: right;">Page 45</p> <p>1 market value is because it is what we would be</p> <p>2 willing to pay if we were in the business of</p> <p>3 taking companies private, which we are not. It's</p> <p>4 a reference -- it's simply a reference point.</p> <p>5 Q So based on your testimony, is it fair to say that</p> <p>6 the private market value calculated by your team</p> <p>7 reflects your view of the value of the business</p> <p>8 plus this control premium that you referenced</p> <p>9 earlier?</p> <p>10 MR. WYLIE: Object to the extent it</p> <p>11 misstates his prior testimony.</p> <p>12 THE WITNESS: Yes. No, the private</p> <p>13 market value is what we think the business is --</p> <p>14 is worth to a private buyer.</p> <p>15 BY MR. CALOZA:</p> <p>16 Q Assuming that a stock is already research</p> <p>17 qualified, does your team typically invest in the</p> <p>18 stock if the market price is greater than your</p> <p>19 estimate of the private market value?</p> <p>20 MR. WYLIE: Objection. Calls for</p> <p>21 speculation. Incomplete hypothetical.</p> <p>22 THE WITNESS: Typically, we would not.</p> <p>23 BY MR. CALOZA:</p> <p>24 Q And why not?</p> <p>25 MR. WYLIE: Same objection.</p>	<p style="text-align: right;">Page 47</p> <p>1 A Our private market value is an annualized</p> <p>2 calculation, so we're always trying to look out</p> <p>3 365 days. We're far less interested in the</p> <p>4 absolute discount than we are the fact that that</p> <p>5 private market value looks like it's going to grow</p> <p>6 through -- we believe that the private market</p> <p>7 value will increase through time.</p> <p>8 So subjectively, we will determine</p> <p>9 sometimes that less discount is required, because</p> <p>10 the private market value should inflect higher</p> <p>11 beyond that 365-day period. Other times, we don't</p> <p>12 think it's ready yet to inflect, and we will</p> <p>13 demand more of a discount. So it's a</p> <p>14 judgment-based decision-making.</p> <p>15 Q In the latter scenario where you don't believe it</p> <p>16 is ready to increase, is there a typical amount</p> <p>17 that's required for the discount before you will</p> <p>18 consider investment?</p> <p>19 MR. WYLIE: Objection to the extent it</p> <p>20 misstates his prior testimony.</p> <p>21 THE WITNESS: A normalized range?</p> <p>22 BY MR. CALOZA:</p> <p>23 Q Correct.</p> <p>24 A Would be in the 20- to 30 percent discount to</p> <p>25 private market value.</p>
<p style="text-align: right;">Page 46</p> <p>1 THE WITNESS: It wouldn't -- it wouldn't</p> <p>2 be consistent with our stated investment approach.</p> <p>3 BY MR. CALOZA:</p> <p>4 Q So can you think of any instances where your team</p> <p>5 did, in fact, invest in a stock even though the</p> <p>6 market price was greater than your team's estimate</p> <p>7 of private market value?</p> <p>8 A The only time I could see it potentially happening</p> <p>9 is when there's information that's in a state of</p> <p>10 flux and the analyst has not had the time to</p> <p>11 rebuild their model in our -- and publish it in</p> <p>12 our system, but they're -- in their judgment, it</p> <p>13 is going up. And in the discussions we've had,</p> <p>14 they've been able to tell us it's going to be --</p> <p>15 when they republish that number, it will be much</p> <p>16 higher; so, therefore, it is. It's just not as</p> <p>17 it's currently shown in our reports. It may be</p> <p>18 out of date. That's the only time I can think of</p> <p>19 it.</p> <p>20 Q How much of a discount is typically necessary</p> <p>21 before your team will consider investing in a</p> <p>22 stock; and by "discount," I mean, the discount</p> <p>23 between the market price and your estimate of</p> <p>24 market -- sorry, your estimate of private market</p> <p>25 value?</p>	<p style="text-align: right;">Page 48</p> <p>1 Q And then, again, in the former scenario where you</p> <p>2 believe that, you know, private market value looks</p> <p>3 like it's going to increase over time, is there a</p> <p>4 typical, you know, discount -- a normalized</p> <p>5 discount range?</p> <p>6 MR. WYLIE: Objection to the extent it</p> <p>7 misstates his prior testimony.</p> <p>8 THE WITNESS: Yeah, I can't -- I can't</p> <p>9 normalize those situations.</p> <p>10 BY MR. CALOZA:</p> <p>11 Q What would be an example of a stock where you</p> <p>12 believed the private market value was going to</p> <p>13 increase over time?</p> <p>14 A Well, we think that there's generally two places</p> <p>15 that accelerating profit cycles come from: The</p> <p>16 first is internal changes within a business, so</p> <p>17 situations where you either have a new management</p> <p>18 team coming on board, you have a new product cycle</p> <p>19 starting up, you have an acquisition or a</p> <p>20 divestiture that will drive -- that we believe</p> <p>21 will drive accelerating profits; the second would</p> <p>22 be external secular events that drive profit</p> <p>23 cycles, like technological breakthroughs,</p> <p>24 regulatory change, demographic waves.</p> <p>25 Q Why are accelerating profits important to your</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
49-52

<p style="text-align: right;">Page 49</p> <p>1 investment strategy?</p> <p>2 A In our work, the highest correlated factor with</p> <p>3 the stock market success over the medium- to</p> <p>4 long-term is stocks follow profits, and the</p> <p>5 derivative to that is stocks follow accelerating</p> <p>6 profits, so we think it's a key to stock market --</p> <p>7 to success in investing in public equities.</p> <p>8 Q Now, you mentioned several examples of internal</p> <p>9 changes that might drive accelerating profits.</p> <p>10 One of them was new management coming on board.</p> <p>11 A Uh-huh.</p> <p>12 Q Does your estimate of private market value</p> <p>13 incorporate your views on the likelihood of new</p> <p>14 management coming in?</p> <p>15 A No. We would wait -- we would wait to see the</p> <p>16 occurrence of the new management team being</p> <p>17 brought in by a board.</p> <p>18 Q Okay. You also had mentioned as a potential</p> <p>19 catalyst, proposed acquisition or divestiture that</p> <p>20 would drive accelerating profits.</p> <p>21 A Uh-huh.</p> <p>22 Q In that case, does your estimate of private market</p> <p>23 value incorporate your view on the likelihood of</p> <p>24 that merger or divestiture occurring?</p> <p>25 A It can.</p>	<p style="text-align: right;">Page 51</p> <p>1 that you're reducing your position -- or one</p> <p>2 reason you might -- might reduce your position is</p> <p>3 because it has exceeded your private -- your</p> <p>4 estimate of private market value on a sustainable</p> <p>5 basis. Could you explain why that would be a</p> <p>6 reason to reduce your position in that stock?</p> <p>7 A Once it's exceeded and stayed above our private</p> <p>8 market value and we've had the time to consider</p> <p>9 any new information into our private market value,</p> <p>10 if the stock is still above that, we no longer --</p> <p>11 no longer intellectually understand why we should</p> <p>12 own the stock. It's beyond our valuation in our</p> <p>13 best -- our best work on what the valuation should</p> <p>14 be; and, therefore, we shouldn't own it. We</p> <p>15 should be reducing that position.</p> <p>16 Q So is that because the market -- the market price</p> <p>17 reflects a higher valuation for that stock than</p> <p>18 your team believes is reasonable given the</p> <p>19 information available to your team?</p> <p>20 MR. WYLIE: I object to the form of the</p> <p>21 question. Vague as to the term "reasonable."</p> <p>22 BY MR. CALOZA:</p> <p>23 Q Do you understand the question?</p> <p>24 A Yes. I would say that's largely correct, yes.</p> <p>25 MR. WYLIE: Alexis, we've been going a</p>
<p style="text-align: right;">Page 50</p> <p>1 Q Are you familiar with the term "crop" -- strike</p> <p>2 that.</p> <p>3 Does the term "crop" have any special</p> <p>4 significance to your investment strategy?</p> <p>5 A Yes.</p> <p>6 Q And what -- what does "crop" mean?</p> <p>7 A There's three broad areas or broad allocation</p> <p>8 groupings within our portfolio: the garden, the</p> <p>9 crop and the harvest. The crop is where we take</p> <p>10 much larger positions in the portfolio, because we</p> <p>11 have high confidence that the profit cycle in the</p> <p>12 business has taken hold. The garden is where we</p> <p>13 take a relatively limited size positions, because</p> <p>14 we think it is still somewhat uncertain that the</p> <p>15 profit cycle will take hold -- has or will take</p> <p>16 hold.</p> <p>17 Q And did you -- you also mentioned harvest. What</p> <p>18 does "harvest" mean?</p> <p>19 A Harvest is where we're reducing our positions</p> <p>20 either because they've exceeded our private market</p> <p>21 value on a sustainable basis or the profit cycle</p> <p>22 we anticipated and bought the security for doesn't</p> <p>23 look like it's accelerating any longer and will</p> <p>24 likely decelerate.</p> <p>25 Q Now, you just said with respect to harvest stocks</p>	<p style="text-align: right;">Page 52</p> <p>1 little over an hour. If you get to a point to a</p> <p>2 transition, maybe it would be a good time for a</p> <p>3 break.</p> <p>4 MR. CALOZA: We can go ahead and take a</p> <p>5 break now. I have more questions on this, but now</p> <p>6 is a -- as convenient stopping place as any.</p> <p>7 MR. WYLIE: Okay.</p> <p>8 MR. CALOZA: Can we go off the record?</p> <p>9 THE VIDEOGRAPHER: We are off the record</p> <p>10 at 10:10 a.m.</p> <p>11 (A brief recess is taken.)</p> <p>12 THE VIDEOGRAPHER: We are back on the</p> <p>13 record at 10:21 a.m.</p> <p>14 BY MR. CALOZA:</p> <p>15 Q Mr. Stevens, I'd like to return to the discount</p> <p>16 between the market price of a security and the</p> <p>17 private market value as calculated by your</p> <p>18 investment team.</p> <p>19 A Uh-huh.</p> <p>20 Q Now, you previously testified that part of that</p> <p>21 discount reflects a control premium; is that</p> <p>22 right?</p> <p>23 A I don't believe that's what I said. I believe</p> <p>24 what I said was that the private market value is a</p> <p>25 reflection of what someone would pay to own and</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
53-56

<p style="text-align: right;">Page 53</p> <p>1 control a business, and the reason that we would</p> <p>2 not pay that price is, to us, that would imply we</p> <p>3 had -- we were paying the control premium. But</p> <p>4 the discount may be the result of many factors.</p> <p>5 Q Okay. Let's talk about some of those -- those</p> <p>6 factors in the discount. You previously testified</p> <p>7 that part of the discount may result from</p> <p>8 different assumptions by different investors; is</p> <p>9 that right?</p> <p>10 A To the best of my knowledge. I don't -- I don't</p> <p>11 know why other people assign the prices they do to</p> <p>12 securities. I know why we assign the prices that</p> <p>13 we do.</p> <p>14 Q Okay. Well, one factor that you testified about</p> <p>15 previously is that other investors may assume</p> <p>16 different growth rates; is that correct?</p> <p>17 A I did mention that that may be one reason that a</p> <p>18 discount is wider than what we project, yeah.</p> <p>19 Q How does Artisan estimate and apply a growth rate</p> <p>20 to a particular stock?</p> <p>21 A In an idealized world, we would try to strip the</p> <p>22 business down and understand how fast we believe</p> <p>23 the units can grow, how much pricing power we</p> <p>24 think there are within the product categories and</p> <p>25 what the resulting incremental margins would be in</p>	<p style="text-align: right;">Page 55</p> <p>1 THE WITNESS: I can't predict what they</p> <p>2 do. I'm sure that people come up with wildly</p> <p>3 different assumptions.</p> <p>4 BY MR. CALOZA:</p> <p>5 Q Do you -- in determining private market value, do</p> <p>6 you ever attempt to quantify the control premium</p> <p>7 that a -- you know, a private buyer would pay to</p> <p>8 take the business private?</p> <p>9 A Rephrase your -- restate your question, please.</p> <p>10 Q Well, you've testified that private market value</p> <p>11 refers to what you think a business is worth to a</p> <p>12 private buyer --</p> <p>13 A Right.</p> <p>14 Q -- is that right? And is part of that value to a</p> <p>15 private buyer the value associated with</p> <p>16 controlling the business? Is that...</p> <p>17 MR. WYLIE: Objection to the form of the</p> <p>18 question. I'm not even sure that was a question.</p> <p>19 BY MR. CALOZA:</p> <p>20 Q Is part of the value of -- is part of private</p> <p>21 market value the value that -- well, let me ask it</p> <p>22 this way: In taking a public business private,</p> <p>23 would a private buyer need to pay a control</p> <p>24 premium over the -- in addition to the value of</p> <p>25 the business as a public business?</p>
<p style="text-align: right;">Page 54</p> <p>1 the business.</p> <p>2 That gives us a sense to the best of our</p> <p>3 ability of what the -- what we call the organic</p> <p>4 growth rate should be. There are many factors</p> <p>5 that ultimately end up influencing a company's</p> <p>6 growth rate that we can't predict such as</p> <p>7 cyclical -- the cyclical influences of the</p> <p>8 economy, the deleveraging effect within a</p> <p>9 business, the resulting either incremental or</p> <p>10 decremental margins from acquisitions or</p> <p>11 divestitures. There's just many things that we</p> <p>12 can't predict, so we try to calculate an ideal</p> <p>13 organic growth rate. It's subjective and</p> <p>14 judgment-based.</p> <p>15 Q And the inputs in that -- you know, that</p> <p>16 subjective- and judgment-based calculation of</p> <p>17 organic growth rate, is that based on publicly</p> <p>18 available information?</p> <p>19 A Yes, always.</p> <p>20 Q And is it fair to say that another investor taking</p> <p>21 the same publicly available information may</p> <p>22 believe that the growth rate is different than</p> <p>23 what your team calculates?</p> <p>24 MR. WYLIE: Objection to the extent it</p> <p>25 calls for speculation.</p>	<p style="text-align: right;">Page 56</p> <p>1 MR. WYLIE: Objection. Form. Vague.</p> <p>2 Calls for speculation and incomplete hypothetical.</p> <p>3 BY MR. CALOZA:</p> <p>4 Q Do you understand the question?</p> <p>5 A Yeah, I can't speak in general terms about</p> <p>6 every -- you know, every company and every</p> <p>7 transaction to take somebody private and what's</p> <p>8 embedded in the assumptions. I can say that our</p> <p>9 view of the private market value -- when we</p> <p>10 calculate the private market value, it's from the</p> <p>11 perspective of if we were going to take this</p> <p>12 company private, what do we think the cash flows</p> <p>13 are worth to us. We -- we try to disregard what</p> <p>14 anyone else thinks in that calculation. It's from</p> <p>15 our perspective.</p> <p>16 Q And why do you disregard, you know, what</p> <p>17 investor -- what other investors think in that</p> <p>18 calculation?</p> <p>19 A Because it's unknowable; we don't know what they</p> <p>20 think.</p> <p>21 Q What about the market price of the stock, the</p> <p>22 current market price of the stock? Does that</p> <p>23 factor into your analysis of what Artisan would</p> <p>24 pay to take the business private?</p> <p>25 A Not directly, no.</p>

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IN RE DIAMOND FOODS, INC.

April 04, 2013
57-60

<p style="text-align: right;">Page 57</p> <p>1 Q Does it factor into that calculus indirectly?</p> <p>2 A It can lead us to ask ourselves what we might be</p> <p>3 missing in our calculation, but it doesn't</p> <p>4 influence the calculation itself.</p> <p>5 Q When you say it can lead you to ask "what might be</p> <p>6 missing in our calculation," can you give examples</p> <p>7 of what you mean by that?</p> <p>8 A Well, an abstract example would be if an analyst</p> <p>9 came to me and said, "I have calculated the</p> <p>10 private market value on this, let's say, bank, and</p> <p>11 it's \$100," and I go through his analysis and then</p> <p>12 I say, "Where is the stock trading?" And he says,</p> <p>13 "At \$40." I'll say, "That's an exceptionally wide</p> <p>14 discount. Do you think there's something missing</p> <p>15 in your analysis? Let's see -- let's go back</p> <p>16 through this and see if there's something</p> <p>17 missing."</p> <p>18 But it may or may not influence what we</p> <p>19 do with that -- you know, how we eventually come</p> <p>20 up with that private market value, but it will</p> <p>21 lead us to ask the question.</p> <p>22 Q I believe that you previously testified that --</p> <p>23 assuming that you do not believe that the private</p> <p>24 market value will increase over time, the typical</p> <p>25 discount-to-market price is 25 -- well, do you</p>	<p style="text-align: right;">Page 59</p> <p>1 A I do, but I think it mischaracterizes what I --</p> <p>2 the question you asked me, as I understood it,</p> <p>3 was: Is there ever a time when public price would</p> <p>4 influence the calculation of our private market</p> <p>5 value, and I gave you a hypothetical situation.</p> <p>6 Q Okay. If the discount between private market</p> <p>7 value and the market price were the 20- to 30</p> <p>8 percent, do you -- would you typically go back and</p> <p>9 ask an analyst what you may be missing in</p> <p>10 understanding and calculating the private market</p> <p>11 value?</p> <p>12 MR. WYLIE: Objection. Form. Compound.</p> <p>13 Calls for speculation. Incomplete hypothetical.</p> <p>14 THE WITNESS: I'm not sure what all that</p> <p>15 is, but our research process is dependent on us</p> <p>16 collectively and individually always reviewing the</p> <p>17 private market value as we -- as we lead up to our</p> <p>18 research qualification. So there may be many,</p> <p>19 many factors that we're questioning and going</p> <p>20 through as we come up with our private market</p> <p>21 value, one of which may be the discount.</p> <p>22 BY MR. CALOZA:</p> <p>23 Q Could you turn to Page 4 of Exhibit 51?</p> <p>24 A Is that the last page?</p> <p>25 Q Yes. Do you see where it says, "sell discipline."</p>
<p style="text-align: right;">Page 58</p> <p>1 remember testifying about the typical discount</p> <p>2 that would be required between private market</p> <p>3 value and market price before your team would</p> <p>4 consider an investment?</p> <p>5 MR. WYLIE: I'll object to the extent it</p> <p>6 misstates prior testimony.</p> <p>7 THE WITNESS: Yeah, I believe what I</p> <p>8 said was we are more interested in private market</p> <p>9 value being able to increase through time than we</p> <p>10 are the absolute discount of the -- of the stock</p> <p>11 price to the private market value, and that in a</p> <p>12 normalized scenario, we look for a 20- to 30</p> <p>13 percent discount, but that's in a normalized --</p> <p>14 that's a normalized range. So I don't believe</p> <p>15 that there is a -- well, yeah.</p> <p>16 BY MR. CALOZA:</p> <p>17 Q Okay. If a -- if the market price for a stock</p> <p>18 were 20- to 30 percent lower than your team's</p> <p>19 estimate of private market value, would that set</p> <p>20 off similar questions about what you might be</p> <p>21 missing as what you just, you know, testified to?</p> <p>22 MR. WYLIE: Well, object. Form. Calls</p> <p>23 for speculation. Incomplete hypothetical.</p> <p>24 BY MR. CALOZA:</p> <p>25 Q Do you understand the question?</p>	<p style="text-align: right;">Page 60</p> <p>1 A Yes.</p> <p>2 Q Could you read that paragraph under "sell</p> <p>3 discipline."</p> <p>4 (Pause in testimony.)</p> <p>5 BY MR. CALOZA:</p> <p>6 Q Do you see where it says, "We may sell a stock if</p> <p>7 it is approaching our estimate of full valuation"?</p> <p>8 A We may, yes.</p> <p>9 Q What does that mean; what does that sentence or</p> <p>10 part of that sentence mean?</p> <p>11 A That means that dependent on our judgment of the</p> <p>12 private market value and its ability to increase</p> <p>13 through time, we may conclude that it no longer</p> <p>14 has the ability to increase, and, therefore, as it</p> <p>15 approaches the private market value, we will begin</p> <p>16 to sell the stock.</p> <p>17 Q So does "full valuation" mean that the private</p> <p>18 market value no longer has the ability to increase</p> <p>19 through time, or does it mean that the stock is</p> <p>20 approaching your estimate of private market value?</p> <p>21 A Restate --</p> <p>22 MR. WYLIE: Objection.</p> <p>23 THE WITNESS: -- your question.</p> <p>24 MR. WYLIE: Form. Compound.</p> <p>25 BY MR. CALOZA:</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
61-64

Page 61

1 Q When I asked about the meaning of that sentence,
2 you testified that you may conclude that it no
3 longer has the ability to increase, and,
4 therefore, it approaches the private market value.
5 I'm trying to understand that response.
6 Are you saying that full valuation -- this
7 reference to selling a stock if it is approaching
8 your estimate of full valuation, does full
9 valuation mean that the stock price is approaching
10 your current estimate of private market value
11 or -- well, let me just ask that question.
12 MR. WYLIE: Objection. Form. Misstates
13 prior testimony. If you understand the
14 question...
15 THE WITNESS: Yeah, I think I do. As I
16 testified earlier, our private market value that
17 we capture in our system that's included in the
18 exhibits, is based on a 365-day annualized
19 calculation. The private market value calculation
20 is built off scenarios that based on what we
21 believe the organic growth rate can be over time,
22 what we think the normalized free cash flow margin
23 can be over time.
24 We -- we, in our judgment, try to
25 understand how much room that private market value

Page 62

1 has over time. So the stock may, on a current
2 basis, look like it's at full valuation versus our
3 stated private market value on the next 365 days,
4 whereas we believe it still has plenty of room to
5 go up. We would be less likely to sell in that
6 situation.
7 BY MR. CALOZA:
8 Q If you look at page -- or the same sentence of
9 Exhibit 51, it says, "We may sell stock if it is
10 approaching our estimate of full valuation if
11 there is a clear deceleration occurring in the
12 company's cycle -- profit cycle, if changing
13 circumstances affect the original reasons we
14 purchase the stock or if we come across a more
15 attractive opportunity." Do you see that?
16 A Yes.
17 Q What would be an example of a "clear deceleration
18 in company's profit cycle"?
19 A Well, no two stocks are the same -- no two
20 companies are the same, and no two data points are
21 exactly crystal clear. But, as an example, if we
22 bought a company -- if we bought -- if we made an
23 investment in a company because we thought that a
24 new product, as an example, would achieve some
25 level of market share penetration, and we saw --

Page 63

1 we saw in evidence, either through the reported
2 company data or through our anecdotal checks
3 within the industry, that that -- that that
4 acceleration was slowing prior to achieving our
5 market share target, we would conclude that it
6 wasn't likely to do what we thought it was going
7 to do, and we would reduce the position.
8 There could be many, many forms of that
9 dependent on the drivers that I gave you earlier
10 for profit cycles, of which there are many.
11 Q Now, part of -- one of the factors that Exhibit 51
12 lists as a factor in selling a stock is if Artisan
13 comes across a more attractive opportunity. Do
14 you see that?
15 A Yes, yep.
16 Q What might your team consider a "more attractive
17 opportunity"?
18 MR. WYLIE: Objection. Speculation.
19 Incomplete hypothetical.
20 BY MR. CALOZA:
21 Q Do you understand the question?
22 A I do understand the question. If we came across
23 something -- another investment opportunity, if we
24 were -- if we were out of cash in the portfolio,
25 we were fully invested and had no room, and we

Page 64

1 came across another opportunity where we had
2 higher conviction than a number of other
3 securities in the portfolio -- and by
4 "conviction," I mean that it was a more durable
5 and protected franchise, that the private market
6 value could grow through time, we had more
7 confidence that it could grow through time and
8 that we saw stronger indications of an
9 accelerating profit cycle -- we may conclude that
10 we were better off selling one security and buying
11 that candidate.
12 Q So would you agree that your team might decide to
13 close out an investment solely to free up capital
14 for a different investment?
15 A We may.
16 Q And under those circumstances, would you agree
17 that the decision to close out the original
18 investment would be for reasons unrelated to a
19 change in information regarding that investment?
20 A Repeat that, please.
21 Q If Artisan exits an investment in order to free up
22 capital for a different investment, would you
23 agree that the decision to close out the original
24 investment could be for reasons unrelated to
25 change in information regarding that first

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
65-68

Page 65

1 company?
2 A Just to be clear again, I only speak for my
3 strategy and not other strategies at Artisan.
4 Q Understood.
5 A Yeah. That is possible.
6 Q Do you believe that your investment strategy
7 produces superior results over time as compared to
8 the stock market, in general?
9 A I think the --
10 MR. WYLIE: I'll object. Form. Vague.
11 BY MR. CALOZA:
12 Q Do you understand the question?
13 A Yes. I think the quantifiable facts would suggest
14 that it -- relative to our appropriate benchmarks,
15 it does produce superior investment results over
16 time.
17 Q And does the amount of the fee charged by Artisan
18 reflect those superior results?
19 MR. WYLIE: Objection to form.
20 Foundation. Beyond the scope of the topics on
21 which the deponent was designated to testify.
22 BY MR. CALOZA:
23 Q Do you understand the question?
24 A Yes.
25 Q Does Artisan receive a fee from MPERS for managing

Page 66

1 MPERS' investments?
2 A We do receive a fee, yes.

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
69-72

Page 71

1 Q What are they?
2 A A global opportunities strategy and a U.S. small
3 cap growth strategy.
4 Q And what are the differences between those two
5 strategies and the -- specifically, the U.S.
6 mid-cap growth strategy?
7 A The primary difference is in portfolio
8 construction and the securities that are available
9 by guideline for those portfolios. So the U.S.
10 small cap growth portfolio has a smaller
11 capitalization range as defined by its prospectus,
12 and the global opportunities portfolio has a
13 broader capitalization range and a broader
14 geographic range as defined by its prospectus.
15 Q And when you say "broader capitalization range,"
16 what do you mean by that?
17 A In the case of the global opportunities portfolio,
18 it is considered to be an all-cap portfolio, so it
19 has no restrictions -- no practical restrictions
20 on the capitalization range that we can invest in;
21 whereas, the mid-cap portfolio has a practical
22 limitation.
23 Q Other than distinctions in the capitalization
24 range and the geographic range, are there any
25 other significant differences between the general

Page 72

1 growth investment strategy that you described
2 earlier and, specifically, the U.S. mid-cap growth
3 strategy that is applied to Artisan's account?
4 MR. WYLIE: Object to the form. What do
5 you mean by "Artisan's account"?
6 BY MR. CALOZA:
7 Q The -- other than distinctions in the
8 capitalization range and the geographic range, are
9 there any significant differences between the
10 general investment strategy that you described
11 earlier and, specifically, the U.S. mid-cap growth
12 strategy that you applied to the investments you
13 manage on behalf of Artisan?
14 A The process --
15 MR. WYLIE: Same -- same objection.
16 BY MR. CALOZA:
17 Q Do you understand the question?
18 A I believe so, yes. The process that we discussed
19 before as it relates to private market value and
20 profit cycles and other things does apply to the
21 Mississippi PERS mid-cap growth portfolio that we
22 manage, yes.
23 MR. CALOZA: Can you mark this as
24 Exhibit 53?
25 (Exhibit No. 53 is marked.)

4 MR. CALOZA: Can you mark this as
5 Exhibit 52?
6 (Exhibit No. 52 is marked.)
7 BY MR. CALOZA:
8 Q Mr. Stevens, you've been handed a document marked
9 Exhibit 52, and it says, "Artisan U.S. Mid-Cap
10 Growth Strategy December 31, 2012, Fact Sheet"?
11 A Uh-huh.
12 Q Do you recognize this document?
13 A Yes.
14 Q What is it?
15 A It's an Artisan U.S. mid-cap growth strategy fact
16 sheet dated December 31st, 2012.
17 Q And is this the strategy that Artisan uses -- that
18 your team uses in managing MPERS' investment
19 account?
20 A It's a composite, yes.
21 Q Are there any differences between -- well, let me
22 back up. Other than the U.S. mid-cap growth
23 strategy, does your investment team manage any
24 other strategies?
25 A Yes.

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
73-76

<p>Page 73</p> <p>1 BY MR. CALOZA:</p> <p>2 Q Mr. Stephens, you've been given a document marked</p> <p>3 Exhibit 53 bearing the Bates Nos. MSPERS 010175</p> <p>4 through MSPERS 010316?</p> <p>5 A Can I make just one comment? My last name is</p> <p>6 spelled with a P-H, just in case that screws up</p> <p>7 your records.</p> <p>8 Q If you look on Page MSPERS 010177.</p> <p>9 A 010177.</p> <p>10 Q It says "Form ADV" at the top of the page; do you</p> <p>11 see that?</p> <p>12 A Yes.</p> <p>13 Q Do you recognize this document?</p> <p>14 A Not in its entirety, no.</p> <p>15 Q Do you know what a Form ADV is?</p> <p>16 A Yes.</p> <p>17 Q What is a Form ADV?</p> <p>18 MR. WYLIE: Objection to the extent it</p> <p>19 calls for a legal conclusion.</p> <p>20 THE WITNESS: My not being an attorney,</p> <p>21 my general understanding is it describes the</p> <p>22 investment process and the investment advisor.</p> <p>23 BY MR. CALOZA:</p> <p>24 Q Do you know how often -- and is this the Form ADV</p> <p>25 of Artisan Partners?</p>	<p>Page 75</p> <p>1 fundamental investment process to construct a</p> <p>2 diversified portfolio of U.S. mid-cap growth</p> <p>3 companies"?</p> <p>4 A Yes.</p> <p>5 Q Do you have any understanding of what "fundamental</p> <p>6 investment process" refers to?</p> <p>7 A I believe so.</p> <p>8 Q And what is that understanding?</p> <p>9 A The process that we discussed earlier or portions</p> <p>10 of it.</p> <p>11 Q When you say "portions of it," what portions --</p> <p>12 what do you mean by "portions of it"?</p> <p>13 A That we only discussed portions of it earlier.</p> <p>14 Q Are there parts of the fundamental -- what</p> <p>15 additional portions of the fundamental investment</p> <p>16 process -- or what -- strike that.</p> <p>17 What are the additional portions of the</p> <p>18 fundamental investment process that we did not</p> <p>19 discuss?</p> <p>20 A It's a very general question. I could take you</p> <p>21 through hours of specifics.</p> <p>22 Q Are you referring to something other than</p> <p>23 securities selection?</p> <p>24 A Yes.</p> <p>25 Q What are you referring to other than securities</p>
<p>Page 74</p> <p>1 MR. WYLIE: Objection. Form and</p> <p>2 foundation.</p> <p>3 BY MR. CALOZA:</p> <p>4 Q You may answer the question.</p> <p>5 A I can't speak to it in its entirety, but based on</p> <p>6 what it says on the first page, I believe it to</p> <p>7 be, yes.</p> <p>8 Q Do you have any understanding of how often Artisan</p> <p>9 Partners updates its Form ADV?</p> <p>10 A Not specifically, no.</p> <p>11 Q Do you have any general understanding of whether</p> <p>12 Artisan updates its Form ADV?</p> <p>13 A It's not my area of responsibility, but I do</p> <p>14 believe we update it periodically.</p> <p>15 Q And do you have any understanding whether Artisan</p> <p>16 distributes updated forms -- Form ADVs to its</p> <p>17 clients?</p> <p>18 A I don't specifically know the schedule, but I do</p> <p>19 generally believe that we distribute them when</p> <p>20 they're updated.</p> <p>21 Q Could you turn to Page MSPERS 010237? Do you see</p> <p>22 where it says, "U.S. mid-cap growth strategy"?</p> <p>23 A Uh-huh, yes.</p> <p>24 Q And underneath that, do you see where it says,</p> <p>25 "Artisan's U.S. mid-cap growth strategy employs a</p>	<p>Page 76</p> <p>1 selection?</p> <p>2 A The composition, roles, responsibilities, daily</p> <p>3 interactions of our team members, the research</p> <p>4 process itself for collecting and analyzing</p> <p>5 information, the security selection process, the</p> <p>6 capital allocation process, the portfolio</p> <p>7 construction process and the client communication</p> <p>8 and -- yeah, client communications, in general. I</p> <p>9 may have missed something there, but, in general,</p> <p>10 I would describe it as that.</p> <p>11 Q Could you describe the research process for</p> <p>12 collecting and analyzing information?</p> <p>13 A To what level of detail would you like it?</p> <p>14 Q You can start with a general level, and if there</p> <p>15 are specifics, I'll ask.</p> <p>16 A We -- we have a team of portfolio managers,</p> <p>17 analysts, associate analysts, traders. The team</p> <p>18 is assigned responsibilities for areas of the</p> <p>19 general economy. They are responsible for</p> <p>20 understanding the companies in those areas of the</p> <p>21 economy and identifying the companies that fit our</p> <p>22 investment criteria, collecting information on</p> <p>23 those companies' businesses, understanding their</p> <p>24 financial models, their market opportunities,</p> <p>25 building up a research report, presenting it to</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
77-80

<p style="text-align: right;">Page 77</p> <p>1 the team.</p> <p>2 The team is responsible for</p> <p>3 understanding and vetting that research report.</p> <p>4 Portfolio managers are responsible for assigning</p> <p>5 the research qualification. That's the general</p> <p>6 extent of the research collection.</p> <p>7 THE VIDEOGRAPHER: This is the end of</p> <p>8 Disc No. 1. We are off the record at 11:04 a.m.</p> <p>9 (A brief recess is taken.)</p> <p>10 THE VIDEOGRAPHER: We are back on the</p> <p>11 record at 11:07 a.m.</p> <p>12 BY MR. CALOZA:</p> <p>13 Q Mr. Stephens, prior to the break, we were</p> <p>14 discussing the research process, and you mentioned</p> <p>15 that it begins with identifying companies fitting</p> <p>16 investment -- Artisan's investment criteria; do</p> <p>17 you remember that?</p> <p>18 A Yes.</p> <p>19 Q And by "investment criteria," what do you mean?</p> <p>20 A Consistent with our -- the characteristics that we</p> <p>21 discussed earlier for security selection:</p> <p>22 franchise companies, reasonable assumptions for</p> <p>23 the private market value and the occurrence of an</p> <p>24 accelerating profit cycle with the belief that a</p> <p>25 profit cycle will occur.</p>	<p style="text-align: right;">Page 79</p> <p>1 information relating to the -- to building out a</p> <p>2 private market value estimate and information</p> <p>3 relating to the presence of a potential profit</p> <p>4 cycle.</p> <p>5 Q And where would they go to get information related</p> <p>6 to franchise characteristics and, you know, the</p> <p>7 profit cycle?</p> <p>8 A They would look at all available public sources of</p> <p>9 information, so it may be reported information</p> <p>10 from the company. It may be vendors who provide</p> <p>11 research reports. It may be contacts that they</p> <p>12 have in the industry.</p> <p>13 Q Do research analysts ever reach out to a company's</p> <p>14 direct suppliers?</p> <p>15 A Yes, on occasion.</p> <p>16 Q What about reaching out to a company's customers?</p> <p>17 A Yes, on occasion.</p> <p>18 Q And what is the purpose for reaching out to a</p> <p>19 company's customer?</p> <p>20 A There can be many reasons, but it's most likely</p> <p>21 trying to further build the investment case around</p> <p>22 the three areas that I described earlier.</p> <p>23 Q And is it the same rationale for reaching out to a</p> <p>24 company's vendors?</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 78</p> <p>1 Q Do you have any understanding of how the research</p> <p>2 analysts identify companies matching those</p> <p>3 criterias?</p> <p>4 A Yes.</p> <p>5 Q And how does that happen?</p> <p>6 A It can happen in many forms. They can hear about</p> <p>7 them anecdotally from their connections within an</p> <p>8 industry. They can read about them in</p> <p>9 periodicals, whether they be mass periodicals or</p> <p>10 specialized industry periodicals. They can find</p> <p>11 them through quantitative research screens. They</p> <p>12 can hear about them from other investment</p> <p>13 professionals, or they can be brought to their</p> <p>14 attention by people within our team. Those are --</p> <p>15 those are general sets. There may be other ways.</p> <p>16 Q And then you said that the research analysts</p> <p>17 collect information on the businesses they</p> <p>18 identify; is that right?</p> <p>19 A The industry, the subsector of the industry, the</p> <p>20 business itself, yes.</p> <p>21 Q And what kind of information are they collecting</p> <p>22 at this stage?</p> <p>23 A They're trying to build the case for investments,</p> <p>24 so it would be information relating to the</p> <p>25 franchise characteristics of the business,</p>	<p style="text-align: right;">Page 80</p> <p>1 Q Do you keep a research file for each potential</p> <p>2 investment?</p> <p>3 A Do I personally, or does Artisan Partners --</p> <p>4 Q Does Artisan?</p> <p>5 A Our team keeps a file for the research we do on</p> <p>6 companies, yes.</p> <p>7 Q And is that file client-specific?</p> <p>8 A No.</p> <p>9 Q So a single research file could be used for all of</p> <p>10 your team's clients?</p> <p>11 A All of our team's clients, yes, yes.</p> <p>12 Q And does Artisan have -- does your team have a</p> <p>13 research file on Diamond Foods?</p> <p>14 A Yes.</p> <p>15 Q And given your prior testimony, is it fair to say</p> <p>16 that that research file is used on behalf of all</p> <p>17 of your team's clients?</p> <p>18 A Yes.</p> <p>19 MR. WYLIE: Objection to the extent it</p> <p>20 misstates his testimony.</p> <p>21 BY MR. CALOZA:</p> <p>22 Q Well, are you aware of any research regarding</p> <p>23 Diamond that was conducted by Artisan; and by</p> <p>24 "Artisan," I'm referring to Artisan Partners, not</p> <p>25 just your investment team. Are you aware of any</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
81-84

<p style="text-align: right;">Page 81</p> <p>1 research regarding Diamond that was conducted by</p> <p>2 Artisan that was not available for use by your</p> <p>3 investment strategy team?</p> <p>4 A No, I'm only aware of the information that was</p> <p>5 collected by our research team, to the best of my</p> <p>6 recollection.</p> <p>7 Q And all of the research available to your</p> <p>8 investment team, was that available for use in</p> <p>9 managing investments specifically on behalf of</p> <p>10 MPERS?</p> <p>11 A Restate that, please.</p> <p>12 Q Are you aware of any research regarding Diamond</p> <p>13 that was conducted by Artisan, either your</p> <p>14 investment team or one of the other investment</p> <p>15 teams, that was not available for use in</p> <p>16 considering which investments to make on behalf of</p> <p>17 MPERS?</p> <p>18 A That's a somewhat nesting question, but I'm only</p> <p>19 aware of the information in our -- that we</p> <p>20 collected.</p> <p>21 Q Okay.</p> <p>22 A And that was the only information used, to my</p> <p>23 knowledge, to make investment decisions for MPERS.</p> <p>24 Q And the -- was the general investment process that</p> <p>25 you testified to earlier consistent with the</p>	<p style="text-align: right;">Page 83</p> <p>1 Q You've been handed a document marked Exhibit 54,</p> <p>2 Bates Nos. AP0001440 through AP0001448. Do you</p> <p>3 recognize this document?</p> <p>4 A Yes, in general.</p> <p>5 Q What is it?</p> <p>6 A It's our -- one of our research pitch packets.</p> <p>7 Q And what do you mean by a "pitch packet"?</p> <p>8 A That's when the analyst presents the idea in</p> <p>9 its -- in a form for the team to consider for</p> <p>10 research qualification.</p> <p>11 Q So at this point in the investment process, fair</p> <p>12 to say that the analyst has already conducted a</p> <p>13 significant amount of research into a potential</p> <p>14 investment?</p> <p>15 MR. WYLIE: Objection. Form. Vague.</p> <p>16 THE WITNESS: They've conducted a level</p> <p>17 of research to complete -- to be able to present</p> <p>18 this document. It may or may not be significant.</p> <p>19 BY MR. CALOZA:</p> <p>20 Q Do you recall when this pitch packet was presented</p> <p>21 to the team?</p> <p>22 A Not specifically.</p> <p>23 Q Do you have a general recollection?</p> <p>24 A Roughly, yes.</p> <p>25 Q And when was that?</p>
<p style="text-align: right;">Page 82</p> <p>1 process used to determine whether to invest in</p> <p>2 Diamond Foods?</p> <p>3 MR. WYLIE: I'll object to the form.</p> <p>4 THE WITNESS: For MPERS or for all</p> <p>5 accounts? For all of the accounts with similar</p> <p>6 strategy?</p> <p>7 BY MR. CALOZA:</p> <p>8 Q For all the accounts.</p> <p>9 A Yes.</p> <p>10 Q And does your answer -- is your answer different</p> <p>11 specifically with respect to MPERS?</p> <p>12 A No.</p> <p>13 MR. CALOZA: Can you mark this as the</p> <p>14 next exhibit?</p> <p>15 (Exhibit No. 54 is marked.)</p> <p>16 THE WITNESS: Can I clarify something?</p> <p>17 BY MR. CALOZA:</p> <p>18 Q Sure.</p> <p>19 A When you say "all of our accounts," are you</p> <p>20 including our different strategies within our same</p> <p>21 group or just our mid-cap growth strategy?</p> <p>22 Q I meant your mid-cap growth strategy.</p> <p>23 A Because we applied -- basically the same strategy</p> <p>24 to our small cap growth portfolio as well, just to</p> <p>25 clarify.</p>	<p style="text-align: right;">Page 84</p> <p>1 A I am going off the date on the cover, and I would</p> <p>2 assume it was somewhere around March 30th of 2010.</p> <p>3 Q Do you know if -- well, do you know who put</p> <p>4 together this pitch packet?</p> <p>5 A I would assume that Rod Brower did the majority of</p> <p>6 the work since his initials are on the front page.</p> <p>7 Q And where is that?</p> <p>8 A Where it says under analyst, R.M.B.</p> <p>9 Q Do you know how long Mr. Brower had been</p> <p>10 researching Diamond prior to presenting this pitch</p> <p>11 packet?</p> <p>12 A No.</p> <p>13 Q I'd like to point your attention to where it says</p> <p>14 "expected value" --</p> <p>15 A Yes.</p> <p>16 Q -- on the first page; do you see that?</p> <p>17 A Yep, yep.</p> <p>18 Q What is this chart?</p> <p>19 A This is the manifestation of the discussion that</p> <p>20 we had earlier about how we build up the private</p> <p>21 market value since our belief is that -- well,</p> <p>22 that's what it is.</p> <p>23 Q And what are the inputs that go into this chart?</p> <p>24 A Well, there's, first of all, three different</p> <p>25 cases. There's a bear case, a base case and what</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
85-88

<p style="text-align: right;">Page 85</p> <p>1 we call a bull case. There is a rough outline of</p> <p>2 the financial model under each of those cases.</p> <p>3 There is estimates of what we believe the growth</p> <p>4 rate for the business is and what the earnings</p> <p>5 profile or free cash flow of the business is and a</p> <p>6 measure of what we think the risk is to the cash</p> <p>7 flow stream. And then there is a result, which is</p> <p>8 the private market value calculation that we</p> <p>9 discussed earlier, under each of those cases and</p> <p>10 for the current year and the forward year. It's</p> <p>11 then annualized and probability weighted. There's</p> <p>12 other things in here, but that's the general.</p> <p>13 Q Now, you referred to a bear case, a base case and</p> <p>14 a bull case?</p> <p>15 A Uh-huh.</p> <p>16 Q What did you mean by that?</p> <p>17 A That there's a bear case, a base case and a bull</p> <p>18 case.</p> <p>19 Q Well, what do you mean by "bear case"?</p> <p>20 A That means if -- that's if we're -- if the -- in</p> <p>21 the unlikely event that things go horribly wrong,</p> <p>22 that could be the resulting business model.</p> <p>23 Q And what do you mean by "the base case"?</p> <p>24 A That's the most probable scenario.</p> <p>25 Q And what do you mean by "the bull case"?</p>	<p style="text-align: right;">Page 87</p> <p>1 "Fiscal '10 estimate revenue" under the bear case,</p> <p>2 it says "599"?</p> <p>3 A Uh-huh.</p> <p>4 Q Where -- what would that 599 reflect?</p> <p>5 MR. WYLIE: Object to form. And</p> <p>6 objection. Calls for speculation.</p> <p>7 BY MR. CALOZA:</p> <p>8 Q Do you know what that figure represents?</p> <p>9 A I don't specifically in this instance.</p> <p>10 Q Well, does it reflect -- does it reflect the --</p> <p>11 does it reflect Mr. Brower's estimate of Fiscal</p> <p>12 '10 revenue, if, under the bear case, things go</p> <p>13 horribly wrong?</p> <p>14 A This report is dated March 30, 2010. If he</p> <p>15 created it on or around that time, the fiscal year</p> <p>16 is July. So there's four months left in the year,</p> <p>17 so he's probably -- yeah, he's probably, for the</p> <p>18 remainder of the year, making an assessment of</p> <p>19 what the revenue downside could be, in his</p> <p>20 judgment. But we have -- no one else has affirmed</p> <p>21 that number at this point.</p> <p>22 Q Okay. And do you have any understanding of the</p> <p>23 basis for that judgment, where he derived that 599</p> <p>24 figure?</p> <p>25 A Not beyond a guess, no.</p>
<p style="text-align: right;">Page 86</p> <p>1 A If things go horribly right, that could be the</p> <p>2 business model.</p> <p>3 Q Where does the -- where do you get the information</p> <p>4 to populate these three models?</p> <p>5 MR. WYLIE: I'll object to form. Are</p> <p>6 you asking specifically about this particular</p> <p>7 model, or are you asking generally about documents</p> <p>8 of this type?</p> <p>9 MR. CALOZA: I'm asking generally about</p> <p>10 documents of this type right now.</p> <p>11 THE WITNESS: Consistent with my earlier</p> <p>12 testimony, there's multiple sources that can be</p> <p>13 used to populate this, including other published</p> <p>14 financial models, company projections, our</p> <p>15 interpretation of those and our assumptions as it</p> <p>16 relates to each of those significant variables.</p> <p>17 BY MR. CALOZA:</p> <p>18 Q So is it fair to say that the numbers populating</p> <p>19 these financial models, these three scenarios,</p> <p>20 reflects your team's judgment about the</p> <p>21 appropriate numbers to use for the bear case, the</p> <p>22 bull case and the base case?</p> <p>23 A No.</p> <p>24 Q Well, let me ask specifically about this document.</p> <p>25 Do you see under "Fiscal '10" -- I think that's</p>	<p style="text-align: right;">Page 88</p> <p>1 Q Do you see that the bear and bull case estimates</p> <p>2 for Fiscal '10 revenue match what is listed under</p> <p>3 consensus for that year?</p> <p>4 MR. WYLIE: I'll object.</p> <p>5 THE WITNESS: I'm sorry. My eyes are --</p> <p>6 BY MR. WYLIE:</p> <p>7 Q Do you see where --</p> <p>8 MR. WYLIE: It's mischaracterizing the</p> <p>9 document.</p> <p>10 BY MR. WYLIE:</p> <p>11 Q Do you see where it says "consensus" to the right</p> <p>12 of the chart?</p> <p>13 A Yes.</p> <p>14 Q And below that it says "low," "mean" and "high."</p> <p>15 And below low it says "599," and below high it</p> <p>16 says "609"?</p> <p>17 A Yes, I do see that.</p> <p>18 Q Now, do you see under bear for Fiscal '10 estimate</p> <p>19 of revenue, it says "599"?</p> <p>20 A Yes.</p> <p>21 Q And for bull, it says "609"?</p> <p>22 A Yes.</p> <p>23 Q Do you see that those two figures match what is</p> <p>24 listed under consensus for Fiscal '10 estimated</p> <p>25 revenue?</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
89-92

<p style="text-align: right;">Page 89</p> <p>1 A I do, but I don't know what the meaning of</p> <p>2 "consensus" is.</p> <p>3 Q Okay. So you have no understanding of what</p> <p>4 "consensus" refers to?</p> <p>5 A Not in this context.</p> <p>6 Q Do you see where it says growth at the left of the</p> <p>7 column -- or at the left of the chart?</p> <p>8 A As an example in bear, where it would say 10</p> <p>9 percent?</p> <p>10 Q Yes. What does "growth" refer to?</p> <p>11 A Our assessment of the organic growth rate of the</p> <p>12 business in that scenario.</p> <p>13 Q So -- and below it, it says "risk"?</p> <p>14 A Yes.</p> <p>15 Q What does risk refer to?</p> <p>16 A As I testified earlier, it's one of the four</p> <p>17 components in our private market calculation. In</p> <p>18 this case, it refers to the persistency and</p> <p>19 durability of the business model, the cash flow</p> <p>20 stream in this business model through time. And</p> <p>21 in this case, we consider it to be medium.</p> <p>22 Q So M refers to medium?</p> <p>23 A M refers to medium.</p> <p>24 Q Okay. And then below "risk," it says "PMVF 10."</p> <p>25 What does that refer to?</p>	<p style="text-align: right;">Page 91</p> <p>1 the base case occurring.</p> <p>2 Q Okay. The next row says "WTD PMV." Is that the</p> <p>3 weighted PMV?</p> <p>4 A That is the -- yeah, that is the probability</p> <p>5 weighted PMV.</p> <p>6 Q Okay. And underneath bear it says "add." Do you</p> <p>7 see that?</p> <p>8 A Yes.</p> <p>9 Q What does that mean?</p> <p>10 A It's not related to the bear or bull case. It's</p> <p>11 simply taking the weighted PMV times a preset 60</p> <p>12 percent. And under -- then there's another one</p> <p>13 for trim, which would be taking the base -- or I'm</p> <p>14 sorry, not the base, the weighted PMV times .8.</p> <p>15 It's just unfortunate that they line up under the</p> <p>16 bear and bull case.</p> <p>17 Q Okay. Well, what does -- what does 60 percent of</p> <p>18 weighted PMV refer to?</p> <p>19 A It's just a -- it's a guideline for alerting us to</p> <p>20 the fact that there's a significant discount to</p> <p>21 the weighted private market value.</p> <p>22 Q And when you say "significant discount," are you</p> <p>23 referring to the discount between weighted private</p> <p>24 market value at the -- the current market price of</p> <p>25 the stock?</p>
<p style="text-align: right;">Page 90</p> <p>1 A That's the private -- in that -- depending on the</p> <p>2 scenario, that would be the private market value</p> <p>3 based on the inputs above for that fiscal year.</p> <p>4 Q And below it, it says "PMVF 11," what does that</p> <p>5 refer to?</p> <p>6 A The same thing, except for Fiscal Year '11.</p> <p>7 Q Okay. The next row says, "Annualized PMV"?</p> <p>8 A Yes.</p> <p>9 Q What is the annualized PMV?</p> <p>10 A As I testified earlier, that's the blending of the</p> <p>11 current year and the forward year and annualizing</p> <p>12 it for 365 days.</p> <p>13 Q Okay. The next row says "probability." What does</p> <p>14 that refer to?</p> <p>15 A That's the -- in this case, Rod's preliminary</p> <p>16 assessment of the probability waiting for the</p> <p>17 different scenarios actually occurring.</p> <p>18 Q So in this -- in this document, it says, "100</p> <p>19 percent under base -- under the base scenario."</p> <p>20 Do you see that?</p> <p>21 A Yes.</p> <p>22 Q What does that mean?</p> <p>23 A That means as a preliminary input for a</p> <p>24 discussion, for a preliminary discussion with our</p> <p>25 team, Rod chose to put a hundred percent weight on</p>	<p style="text-align: right;">Page 92</p> <p>1 A I'm sorry. Repeat that.</p> <p>2 Q When you say "significant discount," what are you</p> <p>3 referring to when you refer to "discount"?</p> <p>4 A I'm referring to the fact that \$37 would be a</p> <p>5 discount to the base -- I'm sorry, to the weighted</p> <p>6 PMV.</p> <p>7 Q Okay. And what is the significance of a 60</p> <p>8 percent discount to the weighted PMV?</p> <p>9 A That it's a 40 percent discount to the weighted</p> <p>10 PMV.</p> <p>11 Q What is the purpose of identifying that 40 percent</p> <p>12 discount?</p> <p>13 A There is none.</p> <p>14 Q Do you see where it says "target range"?</p> <p>15 A Yes.</p> <p>16 Q And to the right of it, it says "37" under bear --</p> <p>17 the bear scenario?</p> <p>18 A Yep.</p> <p>19 Q What does "target range" refer to?</p> <p>20 A It refers to \$37 and \$49.</p> <p>21 Q Okay. And what -- what is the significance of</p> <p>22 that target range?</p> <p>23 A There is none from a practical perspective.</p> <p>24 Q Why is it included on this chart of expected</p> <p>25 value?</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
93-96

<p style="text-align: right;">Page 93</p> <p>1 A Because it's one -- it's one set of numbers that</p> <p>2 we review along with all the others that we</p> <p>3 review.</p> <p>4 Q Does the target range have any significance in</p> <p>5 determining whether to invest in a stock?</p> <p>6 A Not by itself.</p> <p>7 Q Does it have any significance in combination with</p> <p>8 other factors?</p> <p>9 A It's a consideration.</p> <p>10 Q Okay. And what is the -- the target range -- does</p> <p>11 the target range have any significance in</p> <p>12 determining an appropriate price to acquire the</p> <p>13 stock?</p> <p>14 A No. Repeat that, I'm sorry, just so I get the</p> <p>15 specifics of it.</p> <p>16 Q Is there -- does the target range have any</p> <p>17 significance in determining whether to acquire the</p> <p>18 stock at a specific price?</p> <p>19 A Any significance?</p> <p>20 Q Yes.</p> <p>21 A At a specific price?</p> <p>22 Q Yes.</p> <p>23 A It is not in and of itself a determinant. It</p> <p>24 gives us a guidepost for understanding the math</p> <p>25 behind the discount rather than having to compute</p>	<p style="text-align: right;">Page 95</p> <p>1 we think is appropriate is 20- to 30 percent, we</p> <p>2 can quickly look at this and see whether the</p> <p>3 current price falls within that range as we're</p> <p>4 getting ready to have a discussion about the</p> <p>5 stock.</p> <p>6 Q Do you see towards the right of the chart the word</p> <p>7 "guidance" appearing three times?</p> <p>8 A Yes.</p> <p>9 Q Do you know what that refers to?</p> <p>10 A Not -- I don't know specifically in this</p> <p>11 situation, but in general.</p> <p>12 Q And what is your general understanding?</p> <p>13 A That would be, in this case for Fiscal Year '10,</p> <p>14 the company guidance is -- would be my guess -- is</p> <p>15 \$1.79 to \$1.83, and the Fiscal '11 would be 2.25</p> <p>16 to \$2.35.</p> <p>17 Q And above that, do you see where it says</p> <p>18 "Guidance," and below that it says "585 to 605M"?</p> <p>19 A I'm sorry, where are you?</p> <p>20 Q At the top of the chart on the right --</p> <p>21 A Yes, yeah.</p> <p>22 Q -- there's the word "Guidance," and below it, it</p> <p>23 says, "585 to 605M." Do you see that?</p> <p>24 A Yeah, yep.</p> <p>25 Q What does that refer to?</p>
<p style="text-align: right;">Page 94</p> <p>1 it in our heads as we're looking at this.</p> <p>2 Q Well, if a -- so what is the purpose of the word</p> <p>3 "add" in this chart; does it have any</p> <p>4 significance?</p> <p>5 A No, it's just a column heading. It doesn't have a</p> <p>6 bearing on actual actions taken in the portfolio.</p> <p>7 Q What about the word "trim"?</p> <p>8 A It's the same.</p> <p>9 Q Why is it important to understand -- well, you</p> <p>10 said that the target range is a guidepost, is that</p> <p>11 right?</p> <p>12 A Uh-huh.</p> <p>13 Q Why is it important to understand that guidepost?</p> <p>14 MR. WYLIE: Objection. Form. Assumes</p> <p>15 facts not in evidence.</p> <p>16 BY MR. WYLIE:</p> <p>17 Q Is it important to understand that guidepost?</p> <p>18 A It's important to understand without having to</p> <p>19 compute the math as you're looking at this how</p> <p>20 this refers to the normalized range that I talked</p> <p>21 about before. So this bounds that normalized</p> <p>22 range.</p> <p>23 Q And when you say it "bounds that normalized</p> <p>24 range," what do you mean?</p> <p>25 A Under normal circumstances, if the discount that</p>	<p style="text-align: right;">Page 96</p> <p>1 A I would assume that it's similar, that it's the</p> <p>2 company guidance for the Fiscal '10 year, and</p> <p>3 they're bounding the range at 585 to 605. What I</p> <p>4 don't know is when they issued that related to</p> <p>5 when this report was written, if that's what it</p> <p>6 is.</p> <p>7 Q Do you see that under revenue -- so is that</p> <p>8 guidance for a revenue figure?</p> <p>9 A I can only assume, yeah.</p> <p>10 Q Okay. At the bottom of the chart, it says "rate,"</p> <p>11 and to the right of it, it says "4.5 percent"?</p> <p>12 A Yeah.</p> <p>13 Q What does that refer to?</p> <p>14 A That's our -- that's consistent with my earlier</p> <p>15 testimony. There's four -- four primary inputs</p> <p>16 into our private market value calculation, one of</p> <p>17 which is our determination of the risk-free</p> <p>18 rate -- what we call the risk-free rate, and it's</p> <p>19 set at 4 1/2 percent.</p> <p>20 Q And what do you mean by "risk-free rate"?</p> <p>21 A That would be the equivalent rate that one</p> <p>22 would -- it's basically the rate that you use to</p> <p>23 discount back the projected future cash flows.</p> <p>24 Q Okay. You mentioned that the risk-free rate is</p> <p>25 one of the four factors in determining private</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.April 04, 2013
97-100

<p style="text-align: right;">Page 97</p> <p>1 market value.</p> <p>2 A Uh-huh.</p> <p>3 Q Is that right?</p> <p>4 A Yep.</p> <p>5 Q And what are the other three factors?</p> <p>6 MR. WYLIE: Objection. Asked and</p> <p>7 answered.</p> <p>8 BY MR. WYLIE:</p> <p>9 Q You may answer.</p> <p>10 A The organic growth rate of the business, the</p> <p>11 normalized free cash flow margins of the business,</p> <p>12 the -- what we call business risk or the</p> <p>13 persistency and durability of the cash flow stream</p> <p>14 over time and the -- our assessment of the</p> <p>15 risk-free rate.</p> <p>16 Q Does the normalized free cash flow margins appear</p> <p>17 on this chart?</p> <p>18 A In this case, I don't see a specific free cash</p> <p>19 flow margin. I'm assuming that Rod is using the</p> <p>20 reported earnings as a surrogate for free cash</p> <p>21 flow.</p> <p>22 Q And does this chart reflect any assessment of the</p> <p>23 durability of the cash flow stream?</p> <p>24 A That's the business model risk that we discussed</p> <p>25 earlier.</p>	<p style="text-align: right;">Page 99</p> <p>1 talking about this.</p> <p>2 BY MR. CALOZA:</p> <p>3 Q Do you have any understanding based on -- strike</p> <p>4 that.</p> <p>5 MR. CALOZA: Can we go off the record?</p> <p>6 THE VIDEOGRAPHER: We are off the record</p> <p>7 at 11:44 a.m.</p> <p>8 (A brief recess is taken.)</p> <p>9 THE VIDEOGRAPHER: We are back on the</p> <p>10 record at 12:30 p.m.</p> <p>11 MR. CALOZA: Could you mark this as</p> <p>12 Exhibit 55?</p> <p>13 (Exhibit No. 55 is marked.)</p> <p>14 BY MR. WYLIE:</p> <p>15 Q Mr. Stephens, you have been handed a document</p> <p>16 marked Exhibit 55, Bates stamped AP0001396 through</p> <p>17 AP0001414. Do you recognize this document?</p> <p>18 A Yes.</p> <p>19 Q What is it?</p> <p>20 A It's the -- it's a printout of our internal</p> <p>21 note -- research and trading note system.</p> <p>22 Q And when you say it's a printout of your internal</p> <p>23 research and trading system, does that mean that</p> <p>24 it includes the research -- well, strike that.</p> <p>25 What do you mean by internal research</p>
<p style="text-align: right;">Page 98</p> <p>1 MR. WYLIE: Alexis, if you're shifting,</p> <p>2 let's take another break. We've been going</p> <p>3 another hour and a half here.</p> <p>4 MR. CALOZA: Let me -- I'm almost done</p> <p>5 with this document, then we can take a break.</p> <p>6 BY MR. WYLIE:</p> <p>7 Q Could you look at the bottom of Page AP0001440?</p> <p>8 A Uh-huh.</p> <p>9 Q Do you see where it says "conclusion"?</p> <p>10 A Yes.</p> <p>11 Q Do you see the reference to -- do you see where it</p> <p>12 says, "We should intent to R qualify"?</p> <p>13 A Yeah.</p> <p>14 Q What does "R qualify" mean?</p> <p>15 A I think I testified to that earlier.</p> <p>16 Q Is that a reference to research qualifying?</p> <p>17 A Yes.</p> <p>18 Q And later on in that sentence it says, "Chasing</p> <p>19 here doesn't seem prudent." Do you see that?</p> <p>20 A Yes.</p> <p>21 Q Do you have any understanding of what "chasing</p> <p>22 here" means?</p> <p>23 MR. WYLIE: Objection. Foundation.</p> <p>24 THE WITNESS: I don't, based on my</p> <p>25 recollection of the events that led up to us</p>	<p style="text-align: right;">Page 100</p> <p>1 and trading system?</p> <p>2 A It captures the data that was submitted to it</p> <p>3 relative to our research and trading, and it looks</p> <p>4 like it's printed out on Diamond Foods.</p> <p>5 Q Are you aware of any research regarding Diamond</p> <p>6 that would not be included or summarized in this</p> <p>7 document?</p> <p>8 A Yes.</p> <p>9 Q And what research would that be?</p> <p>10 A I would believe that there's handwritten --</p> <p>11 there's probably research notes that were written</p> <p>12 in hand that were included in the research file.</p> <p>13 Q What typically gets summarized in your internal</p> <p>14 research and trading system?</p> <p>15 A Summaries of meetings that we may have -- that we</p> <p>16 may have had, or our internal thinking based on</p> <p>17 some information that's come out in the public --</p> <p>18 in a public forum someplace.</p> <p>19 Q Would you --</p> <p>20 A And then -- and then trades that were entered to</p> <p>21 our trading department.</p> <p>22 Q Would you expect all significant -- would you</p> <p>23 expect the internal research and trading system to</p> <p>24 reflect all significant information regarding the</p> <p>25 company?</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
101-104

<p style="text-align: right;">Page 101</p> <p>1 A No.</p> <p>2 Q What are -- do you see the column headers at the</p> <p>3 top of Exhibit 55?</p> <p>4 A Yes.</p> <p>5 Q What does "ARTMX" mean?</p> <p>6 A That is the mutual fund for our mid-cap growth</p> <p>7 strategy, and it's used as a proxy for the</p> <p>8 composite of all accounts that employ that</p> <p>9 approach.</p> <p>10 Q And what does "ARTSX" refer to?</p> <p>11 A It's the -- small cap, it's the ticker symbol --</p> <p>12 sorry, ARTMX is the ticker symbol. ARTSX is the</p> <p>13 ticker symbol, and we use it as a reference</p> <p>14 account, again, for all of the clients that are in</p> <p>15 our small cap growth strategy.</p> <p>16 Q And "OPPTY"?</p> <p>17 A Is our global opportunities portfolio. That's not</p> <p>18 the ticker. I don't know why they have it in here</p> <p>19 as OPPTY, but it's a reference to our global</p> <p>20 opportunities portfolio, and it's a reference for</p> <p>21 all of the accounts that are in that composite.</p> <p>22 Q What about "ARTLSE"?</p> <p>23 A That's our long/short fund.</p> <p>24 Q And are all of these funds managed by your</p> <p>25 investment team?</p>	<p style="text-align: right;">Page 103</p> <p>1 Diamond?</p> <p>2 A Yes, I believe so, based on the note that follows.</p> <p>3 Q Okay. And do you know the names of those</p> <p>4 individuals?</p> <p>5 A I don't.</p> <p>6 Q Do you know whether Mr. Jochmann met with any</p> <p>7 other members of management -- of Diamond</p> <p>8 management at that time?</p> <p>9 A I don't.</p> <p>10 Q Other than what appears in the content of this</p> <p>11 entry dated 4/7/2010, are you aware of any other</p> <p>12 documents that discuss the content of</p> <p>13 Mr. Jochmann's meeting with Diamond management?</p> <p>14 A I am not, no.</p> <p>15 Q If you look at the last page of the document,</p> <p>16 AP0001414.</p> <p>17 A Yeah.</p> <p>18 Q Do you see where it says No. 4, and it starts,</p> <p>19 "Kettle uses a very similar sales approach"?</p> <p>20 A Yes, yep.</p> <p>21 Q And the line below that, it refers to "DSD"?</p> <p>22 A Yes.</p> <p>23 Q Do you know what "DSD" stands for?</p> <p>24 A I believe in Martin's parlance it's direct store</p> <p>25 distribution.</p>
<p style="text-align: right;">Page 102</p> <p>1 A Yes.</p> <p>2 Q Do you see where it says "close price"?</p> <p>3 A Yes.</p> <p>4 Q What does that refer to?</p> <p>5 A That's generally the -- I believe it to be the</p> <p>6 closing price of the security that's referenced.</p> <p>7 I just don't know if it's as of the date or the</p> <p>8 night before that's listed on here.</p> <p>9 Q I'd like you to turn to AP0001413, which is the</p> <p>10 second-to-last page of the document.</p> <p>11 A Yep.</p> <p>12 Q You see at the bottom of the page where it says</p> <p>13 "N. Martin Jochmann" --</p> <p>14 A Yes.</p> <p>15 Q -- "4/7/2010"?</p> <p>16 A Yes, yep.</p> <p>17 Q What does the N signify?</p> <p>18 A It means the note that was written was by Martin</p> <p>19 Jochmann, was authored and submitted by Martin</p> <p>20 Jochmann.</p> <p>21 Q And then it says, "Summary, met with V.P. of</p> <p>22 corporate strategy and V.P. of treasury/IR."</p> <p>23 A Yep.</p> <p>24 Q Do you know, does that refer to the V.P. of</p> <p>25 corporate strategy and V.P. of treasury/IR of</p>	<p style="text-align: right;">Page 104</p> <p>1 Q And what does "direct store distribution" mean?</p> <p>2 A That would mean that someone who has trucks that</p> <p>3 go to -- that make deliveries to the store versus</p> <p>4 contracting for delivery through a third party.</p> <p>5 Q Now, how often -- well, how typical is it for an</p> <p>6 analyst to meet with company management?</p> <p>7 A Very.</p> <p>8 Q And this entry's dated April 7, 2010. Do you</p> <p>9 know -- excuse me. Do you know if Diamond was</p> <p>10 research qualified at that time?</p> <p>11 A Offhand, no, I don't know.</p> <p>12 Q Under No. 1 in this entry, which appears on</p> <p>13 AP0001414, it describes the background of the CEO</p> <p>14 and CFO; do you see that?</p> <p>15 A Yes, yep.</p> <p>16 Q Is it important to Artisan to understand company</p> <p>17 management's background?</p> <p>18 A Yes.</p> <p>19 Q Why is that?</p> <p>20 A Well, by "Artisan," I'm speaking about our</p> <p>21 investment strategy and not Artisan overall. But</p> <p>22 as it relates to our investment strategy, it's</p> <p>23 important because it has a bearing on their</p> <p>24 ability to maintain the franchise that we're</p> <p>25 investing in.</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.April 04, 2013
105-108

<p>Page 105</p> <p>1 Q Do you --</p> <p>2 MR. CALOZA: Can you mark this as</p> <p>3 Exhibit 56?</p> <p>4 (Exhibit No. 56 is marked.)</p> <p>5 BY MR. WYLIE:</p> <p>6 Q Mr. Stephens, you've been handed a document marked</p> <p>7 Exhibit 56 bearing Bates Nos. AP0001213 through</p> <p>8 AP0001223. And at the top of the first page, it</p> <p>9 says, "4/7/09, Meet With Diamond management."</p> <p>10 A Yep.</p> <p>11 Q Do you recognize this document?</p> <p>12 A Yes.</p> <p>13 Q What is it?</p> <p>14 A It's someone's handwritten notes.</p> <p>15 Q Do you recognize the handwriting?</p> <p>16 A I don't.</p> <p>17 Q If you look at Page AP1413 of Exhibit 55, the</p> <p>18 entry by Mr. Jochmann is dated April 7, 2010, and</p> <p>19 Exhibit 56 is dated April 7, 2009. Do you know</p> <p>20 whether Exhibit 56 corresponds with Mr. Jochmann's</p> <p>21 notes of the meeting referenced in the April 7,</p> <p>22 2010 entry of Exhibit 55?</p> <p>23 A I don't.</p> <p>24 Q Do you know whether Mr. -- do you know whether</p> <p>25 research analysts at Artisan were following</p>	<p>Page 107</p> <p>1 by association, I assume that it's from</p> <p>2 conversation.</p> <p>3 Q Could it be possible that this is a conversation</p> <p>4 about the CEO?</p> <p>5 A It's possible. It says, "Meet with Diamond</p> <p>6 management," but the date's wrong, so it's hard</p> <p>7 for me to say.</p> <p>8 Q Are you aware of any -- do you have any</p> <p>9 understanding of the context in which Exhibit 56</p> <p>10 was written?</p> <p>11 A I honestly don't. It's illegible to me.</p> <p>12 MR. CALOZA: Can you mark this as</p> <p>13 Exhibit 57?</p> <p>14 (Exhibit No. 57 is marked.)</p> <p>15 BY MR. WYLIE:</p> <p>16 Q Mr. Stephens, you've been handed a document marked</p> <p>17 Exhibit 57, a single page Bates stamped AP0001034.</p> <p>18 A Yep.</p> <p>19 Q Do you recognize this document?</p> <p>20 A I've seen it, yes.</p> <p>21 Q What is that?</p> <p>22 A It's a -- it's someone's handwritten notes.</p> <p>23 Q Do you recognize this handwriting?</p> <p>24 A I don't.</p> <p>25 Q Do you see that the document is dated 4/15/10?</p>
<p>Page 106</p> <p>1 Diamond as early as April 7, 2009?</p> <p>2 A Yes -- oh, no, no, no. Sorry, sorry, sorry.</p> <p>3 Strike that. 2009. This is April 7, 2010, and</p> <p>4 this is 2009.</p> <p>5 Q Do you have any understanding whether the notes in</p> <p>6 Exhibit 56, which is dated 2009, corresponds with</p> <p>7 the entry in Exhibit 55, dated April 7, 2010?</p> <p>8 A I have no idea.</p> <p>9 Q Okay. If you -- look at the top of Exhibit 56.</p> <p>10 It says, "CEO," and I think that says, "Michael</p> <p>11 Mendes." Do you see where -- do you see that?</p> <p>12 A I see where you're looking, yeah, but I can't make</p> <p>13 it out.</p> <p>14 Q Do you know whether this refers to a conversation</p> <p>15 with the CEO?</p> <p>16 A I tried to read through this in my review, and I</p> <p>17 couldn't make out the handwriting, so I can't</p> <p>18 really say.</p> <p>19 Q Do you -- do you have any reason to believe this</p> <p>20 reflects a conversation with the CEO of Diamond?</p> <p>21 A I do.</p> <p>22 Q Based on what?</p> <p>23 A Well, apparently, it was in our research folder</p> <p>24 for Diamond. It's not unusual for things to be</p> <p>25 legible only to the analysts that wrote them. So</p>	<p>Page 108</p> <p>1 A Yes.</p> <p>2 Q And at the top, it says "DMND F/up." Do you have</p> <p>3 any understanding of what "DMND F/up" means?</p> <p>4 A I understand what DMND means. The F/up can have</p> <p>5 many meanings.</p> <p>6 Q Fair enough. Below that is an asterisk and MGMT.</p> <p>7 Do you have any understanding what that means?</p> <p>8 A I would assume that that means management.</p> <p>9 Q Do you have any understanding of whether this</p> <p>10 document refers to a follow-up conversation with</p> <p>11 Diamond management?</p> <p>12 A I don't know. It could be a prep for a call. I</p> <p>13 don't know what it is.</p> <p>14 Q So do you have -- are you aware of any of the</p> <p>15 context in which this document was created?</p> <p>16 A No. I'd be guessing, but -- I'd be guessing.</p> <p>17 Q If you turn back to Exhibit 55 and look at</p> <p>18 Page AP0001413, there's an entry for March 9,</p> <p>19 2011; do you see that?</p> <p>20 A March 9, 2011, yep.</p> <p>21 Q And to the left of it, it says "N. Rod Brower," do</p> <p>22 you see that?</p> <p>23 A Yup.</p> <p>24 Q Does that indicate that Rod Brower wrote this</p> <p>25 note?</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.April 04, 2013
109-112

<p style="text-align: right;">Page 109</p> <p>1 A It indicates that he submitted it, so I would</p> <p>2 assume he wrote it, yeah.</p> <p>3 Q Okay. At the end of the first paragraph under</p> <p>4 that note, it says, "We'll see MGMT tomorrow at</p> <p>5 BAL conference." Do you see that?</p> <p>6 A Yep.</p> <p>7 Q Do you understand what that sentence means?</p> <p>8 A Yes. That means that Rod will be at the B -- B of</p> <p>9 A/Merrill Lynch conference, and the management</p> <p>10 team will be there as well. It's a -- yeah.</p> <p>11 Q And do you know if Mr. Brower actually attended</p> <p>12 the Bank of America/Merrill Lynch conference?</p> <p>13 A I don't know. I don't recall whether he did or</p> <p>14 didn't, but I -- yeah.</p> <p>15 Q Do you have any reason to doubt that he attended</p> <p>16 the Bank of America/Merrill Lynch conference?</p> <p>17 A No.</p> <p>18 Q Do you have any reason to doubt that he met with</p> <p>19 management at that conference?</p> <p>20 A No.</p> <p>21 Q And just to confirm, do you know -- well, strike</p> <p>22 that question.</p> <p>23 Can you turn to Page AP1411 of</p> <p>24 Exhibit 55?</p> <p>25 A Yep.</p>	<p style="text-align: right;">Page 111</p> <p>1 Q Do you know what that's a reference to?</p> <p>2 A I don't specifically, but I believe it means that</p> <p>3 in our lunch meeting, in our daily research</p> <p>4 meeting, we will discuss Diamond Foods on Friday,</p> <p>5 whatever Friday of that week was.</p> <p>6 Q So does that refer to an internal team meeting of</p> <p>7 your investment team?</p> <p>8 A Yeah.</p> <p>9 Q Do you remember discussing Diamond in your team's</p> <p>10 daily research meetings?</p> <p>11 A Not specifically.</p> <p>12 Q Do you know whether Diamond was research qualified</p> <p>13 by March 14, 2011?</p> <p>14 A I don't.</p> <p>15 Q If you look right above the March 14 entry, there</p> <p>16 is an entry for March 18, 2011.</p> <p>17 A Yes.</p> <p>18 Q Do you see that?</p> <p>19 A Yep.</p> <p>20 Q And to the left it says, "Craig" -- I'm not sure</p> <p>21 how to pronounce that same, but it's Cepukenas --</p> <p>22 A Cepukenas.</p> <p>23 Q Is Mr. Cepukenas a member of your investment team?</p> <p>24 A He is.</p> <p>25 Q Okay. And then underneath "Summary" it says,</p>
<p style="text-align: right;">Page 110</p> <p>1 Q Do you see the entry on March 14, 2011?</p> <p>2 A Yes.</p> <p>3 Q And was that entry written or submitted by Rod</p> <p>4 Brower?</p> <p>5 A It was.</p> <p>6 Q Under summary it says, "Rough notes from MGMT</p> <p>7 meeting last week pasted in detail section." Do</p> <p>8 you see that?</p> <p>9 A Yep.</p> <p>10 Q Does that refresh your recollection on whether or</p> <p>11 not Mr. Brower met with management at the BA -- B</p> <p>12 of A/Merrill Lynch conference?</p> <p>13 A It doesn't refresh my memory that specifically,</p> <p>14 but I would believe, based on this, that he did</p> <p>15 meet with them, yeah.</p> <p>16 Q And do you know any details about that meeting</p> <p>17 with management?</p> <p>18 A Only the ones that are written here.</p> <p>19 Q And do you know who Mr. Brower met with from</p> <p>20 Diamond's management?</p> <p>21 A I don't.</p> <p>22 Q At the end of that paragraph on Page 1411, it</p> <p>23 says, "We'll discuss DMND on Friday." Do you see</p> <p>24 that?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 112</p> <p>1 "Buy, DMND 20 DPS, 20 TGT, no LMTSC13." Do you</p> <p>2 see that?</p> <p>3 A Yep.</p> <p>4 Q What does that mean?</p> <p>5 A That means that a buy order was entered for 40</p> <p>6 basis points in Diamond common equity with a 40</p> <p>7 basis-point target with no price limit for the</p> <p>8 small cap accounts of which SC13 is the composite</p> <p>9 account -- or the model account for the composite.</p> <p>10 Q And you said the order was for 40 basis points?</p> <p>11 A Yes.</p> <p>12 Q Do you see that the entry says 20 basis points?</p> <p>13 A There's two entries. There's an entry by Craig</p> <p>14 Cepukenas for 20 basis points and Rob Brower for</p> <p>15 20 basis points, totaling 40.</p> <p>16 Q Oh, okay. You see that there are multiple entries</p> <p>17 for March 18 --</p> <p>18 A Yes.</p> <p>19 Q -- 2011?</p> <p>20 A Yep.</p> <p>21 Q And one is by Matt Kamm, one is by Rod Brower and</p> <p>22 one is by Craig Cepukenas; is that right?</p> <p>23 A That's correct, yes.</p> <p>24 Q In the entry by Rod Brower, it says, "See related</p> <p>25 DDM note." Do you see that?</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
113-116

<p style="text-align: right;">Page 113</p> <p>1 A In the entry by Rod Brower it says -- yes, "See 2 related DDM note," yep. 3 Q What does "DDM note" mean? 4 A It's in reference to the system that I mentioned 5 before that -- the research and trading system. 6 Its moniker is due diligence manager, DDM. 7 Q Now, do you have any understanding whether Diamond 8 was research qualified by March 18, 2011? 9 A Based on this, I would say, yes, it was research 10 qualified. 11 Q And to confirm, "research qualified" means that it 12 has been fully vetted by your investment team? 13 MR. WYLIE: Objection. Vague. 14 BY MR. WYLIE: 15 Q Do you understand the question? 16 A I do. "Fully" is inaccurate. 17 Q Does research qualified mean that it has been 18 vetted by your research team? 19 A To a basic level of decision-making, yes. 20 Q Now, when -- strike that. 21 Why are there three purchase entries for 22 the same day by three different team members? 23 A There's one entry, which is to buy Diamond to -- 24 50 basis points. There are three separate 25 individuals who are allocating the capital to what</p>	<p style="text-align: right;">Page 115</p> <p>1 there is a discount to the market price of the 2 stock estimate compared to your estimate of 3 private market value? 4 A Repeat that. 5 Q Well, you testified that at this point in time, 6 March 18, 2011, your team's estimate of private 7 market value was greater than \$51.40, which is the 8 price of Diamond stock on that day; is that right? 9 MR. WYLIE: Objection. Assumes facts 10 not in evidence. 11 BY MR. WYLIE: 12 Q You can answer. 13 A I'm sorry. Repeat it one more time. 14 Q Did you testify that on -- that your team's 15 estimate of private market value on March 18, 16 2011, the date of this 50 basis points purchase, 17 your team's estimate was greater than \$51.40, 18 which represents the closing price of Diamond on 19 that day? 20 MR. WYLIE: Same objection. 21 BY MR. CALOZA: 22 Q Is that an accurate summary of your testimony? 23 A I did say that. I should have said I believe it 24 would have been higher than that in a normal case, 25 yes.</p>
<p style="text-align: right;">Page 114</p> <p>1 we call their sub portfolios so we can keep track 2 of their performance instead of internal 3 accounting and tracking system so we can monitor 4 our people's performance. 5 Q But only one order for 50 basis points would have 6 been submitted for execution -- 7 A Correct. 8 Q -- is that right? 9 A Yeah. 10 Q Okay. Do you see where it says "51.40" in these 11 three entries for March 18, 2011? 12 A Yeah, yep. 13 Q And what is that a reference to? 14 A It should be, if you look at the front page, the 15 column heading under "closing price." 16 Q And is there a -- is there anywhere in the DDM 17 file at this point that indicates what the -- what 18 your view of private market value was at the time 19 of this purchase? 20 A Not in this -- not in this view of the DDM, no. 21 Q Is it fair to say that at this point in time on 22 March 18, 2011, your team's estimate of private 23 market value was greater than \$51.40? 24 A Yes. 25 Q And is that because your team only invests when</p>	<p style="text-align: right;">Page 116</p> <p>1 Q And why do you believe that it would have been 2 higher than the closing price of Diamond on that 3 day? 4 A Because I think it would be an exception for us to 5 initiate a position above our estimate of private 6 market value, but not impossible. 7 Q And do you have any reason to believe that this 8 instance on March 18, 2011, was an exception to 9 the general rule? 10 A No. 11 Q If you look at the bottom of AP1410, there's an 12 entry for March 18 submitted by Rod Brower. Do 13 you see that? 14 A At the bottom? 15 Q Of 1410. 16 A Yep. 17 Q And then it continues onto the next page and says, 18 "briefly visited Diamond on -- DMND on Friday. 19 It's been R qualified for SX." 20 A Right. 21 Q What does it mean when it says, "It's been R 22 qualified for SX"? 23 A That it's been -- it's a bit of a misnomer in the 24 way he described it, but it's been R qualified, 25 and we've determined that it's appropriate for the</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.April 04, 2013
117-120

<p>Page 117</p> <p>1 small cap portfolio.</p> <p>2 Q Are there different processes for research</p> <p>3 qualifying stocks for the small cap for the --</p> <p>4 portfolio versus the mid-cap portfolio?</p> <p>5 A No.</p> <p>6 Q So when it says it's been "R qualified for SX," is</p> <p>7 the reference to SX a function of just market</p> <p>8 capitalization, or is it -- strike that.</p> <p>9 Do you see under No. 3 of that entry, it</p> <p>10 says, "MGMT, I've had the opportunity to get in</p> <p>11 front of them on two separate occasions." Do you</p> <p>12 know what those -- do you know what that refers</p> <p>13 to?</p> <p>14 A It sounds like he's in some way had an opportunity</p> <p>15 to meet the management on two separate occasions.</p> <p>16 Q Do you know what those occasions were?</p> <p>17 A Not from this, no. Not specifically.</p> <p>18 Q And then it goes on to say, "Recent meeting with</p> <p>19 CFO was productive in building my comfort level."</p> <p>20 Do you know any details about Mr. Brower's meeting</p> <p>21 with the CFO?</p> <p>22 A Only the details that he published on 3/14 that</p> <p>23 are included here.</p> <p>24 Q Do you know if he met with any other members of</p> <p>25 management at that time?</p>	<p>Page 119</p> <p>1 Q Do you understand the question?</p> <p>2 A I do understand the question. In general, yes.</p> <p>3 There are some exceptions that have to do with</p> <p>4 specific client guidelines.</p> <p>5 Q Do you know if there were any exceptions with</p> <p>6 respect to purchases of Diamond Foods?</p> <p>7 A No, not that I know of.</p> <p>8 Q Can you turn to Page AP1409?</p> <p>9 A 14...</p> <p>10 Q 09.</p> <p>11 A 09. Yep.</p> <p>12 Q Do you see an entry for March 22, 2011?</p> <p>13 A Yes.</p> <p>14 Q Now, to the right of that line, it says "0.22."</p> <p>15 What does that refer to?</p> <p>16 A The column heading, I believe, is in reference to</p> <p>17 the small cap composite. So the small cap</p> <p>18 accounts at that point would have approximately 22</p> <p>19 basis points each in Diamond Foods.</p> <p>20 Q And underneath "Summary," it says, "Spoke with</p> <p>21 Linda Segre as a follow-up to our small group</p> <p>22 meeting with Diamond at BAML consumer conference</p> <p>23 last week." Do you see that?</p> <p>24 A Yep.</p> <p>25 Q Do you know who Linda Segre is?</p>
<p>Page 118</p> <p>1 A I don't.</p> <p>2 Q Is 50 basis points a typical amount for an initial</p> <p>3 investment in a stock?</p> <p>4 A Yes.</p> <p>5 Q And when your team invests in a stock, does it</p> <p>6 invest for all of its clients at once, or does it</p> <p>7 determine specific -- or does it invest in a stock</p> <p>8 on a client-by-client basis?</p> <p>9 MR. WYLIE: Objection. Form. Compound.</p> <p>10 If you can answer.</p> <p>11 BY MR. CALOZA:</p> <p>12 Q Do you understand the question?</p> <p>13 A I do. We manage three strategies for clients.</p> <p>14 All clients fit into one of those three. When we</p> <p>15 make an investment, we do it by strategy type, and</p> <p>16 all clients within that strategy purchase or sell</p> <p>17 at the same time, and it's allocated to them pro</p> <p>18 rata.</p> <p>19 Q So, in other words, is it fair to say that your</p> <p>20 team decides to purchase a security and purchase</p> <p>21 it -- purchases it as a block for the clients for</p> <p>22 that particular strategy?</p> <p>23 MR. WYLIE: Objection. Form. Vague as</p> <p>24 to the term "block."</p> <p>25 BY MR. CALOZA:</p>	<p>Page 120</p> <p>1 A No, I don't.</p> <p>2 Q Do you know who participated in this small group</p> <p>3 meeting with DM -- with Diamond?</p> <p>4 A I don't, no.</p> <p>5 Q Do you know if anyone other than Mr. Brower would</p> <p>6 have participated on Artisan's end?</p> <p>7 A On Artisan's behalf?</p> <p>8 Q Yes.</p> <p>9 A No, I don't know.</p> <p>10 Q On the next page, AP1410, do you see where it says</p> <p>11 "Q for commentary"?</p> <p>12 A I'm sorry, it says what?</p> <p>13 Q "Q for commentary."</p> <p>14 A Yes.</p> <p>15 Q And do you see where underneath that it says,</p> <p>16 "Missed the top line by 9 million driven entirely</p> <p>17 by the non-retail biz, i.e., walnuts"?</p> <p>18 A Yep.</p> <p>19 Q Do you know whether -- do you know whether this</p> <p>20 refers to a commentary in Mr. Brower's meeting</p> <p>21 with Ms. Segre?</p> <p>22 A I believe it does, yes.</p> <p>23 Q Do you know whether this was public information at</p> <p>24 this point in time?</p> <p>25 A I don't know, because I don't know who Linda Segre</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.April 04, 2013
121-124

<p style="text-align: right;">Page 121</p> <p>1 is. But, yes, I have to believe it's -- if we</p> <p>2 have it, it's public information.</p> <p>3 Q Now, are you aware whether part of Diamond's</p> <p>4 products include walnut products?</p> <p>5 A Am I aware of whether Diamond's products include</p> <p>6 walnut products?</p> <p>7 Q Yes.</p> <p>8 A Yes, I am aware of that.</p> <p>9 Q Is this comment about missing the top line by 9</p> <p>10 million significant?</p> <p>11 A I don't know.</p> <p>12 Q Underneath that it says, "Guidance increased by</p> <p>13 EPS by 2C in combination with 7C increase in add</p> <p>14 spend, management clearly had room to maneuver."</p> <p>15 Do you see that?</p> <p>16 A Yes.</p> <p>17 Q Is that a -- do you think that is a significant</p> <p>18 statement?</p> <p>19 MR. WYLIE: Objection to form. I don't</p> <p>20 know what you mean by "significant."</p> <p>21 BY MR. CALOZA:</p> <p>22 Q Do you understand the question?</p> <p>23 A Not really. Can you repeat it?</p> <p>24 Q Is that -- would that information be important in</p> <p>25 considering whether to invest in Diamond Foods?</p>	<p style="text-align: right;">Page 123</p> <p>1 below -- 9 million below on the top line.</p> <p>2 Q And is it important in your investment calculus</p> <p>3 that they were de-emphasizing walnuts?</p> <p>4 A I think it was important that they weren't</p> <p>5 emphasizing walnuts.</p> <p>6 Q Why is that?</p> <p>7 A Because we didn't view that as the growth part of</p> <p>8 the business.</p> <p>9 Q So does the fact that they were not emphasizing</p> <p>10 walnuts, did that make it more likely that you</p> <p>11 would invest in Diamond?</p> <p>12 A No.</p> <p>13 Q Did it have any effect on the likelihood of you</p> <p>14 investing in Diamond?</p> <p>15 A No.</p> <p>16 Q Now, the reference to "fixed margin biz," do you</p> <p>17 understand what that means?</p> <p>18 A Yes, I believe so.</p> <p>19 Q What does that mean?</p> <p>20 A It means that -- I believe it means that they sold</p> <p>21 the walnuts through at a fixed -- at a fixed</p> <p>22 margin over the price they paid to the farmers for</p> <p>23 the walnuts. But without talking to Rod about it</p> <p>24 right now for sure, I can't say.</p> <p>25 Q And then the line below it, below that it says,</p>
<p style="text-align: right;">Page 122</p> <p>1 A Not particularly, no.</p> <p>2 Q And why is that?</p> <p>3 A My sense from what I looked at earlier, that two</p> <p>4 cents is not a significant amount for this company</p> <p>5 on \$1.87 of earnings.</p> <p>6 Q Do you have any understanding of what it means</p> <p>7 when it says, "Management clearly had room to</p> <p>8 maneuver"?</p> <p>9 A Not in this instance, no.</p> <p>10 Q Then if you go down two lines, it says, "Walnuts</p> <p>11 only. Any ingredients international bulk been in</p> <p>12 non-investment mode, fixed margin biz, set price</p> <p>13 paid to farmers in August." Do you see that?</p> <p>14 A Yeah.</p> <p>15 Q Do you have any understanding of what that means?</p> <p>16 A Not the level of understanding that I once had,</p> <p>17 but I can sort of figure it out.</p> <p>18 Q Do you, sitting here today, do you have any</p> <p>19 understanding of what that means?</p> <p>20 A In general terms, yes.</p> <p>21 Q And what is your general understanding?</p> <p>22 A That the company's been de-emphasizing walnuts,</p> <p>23 that it's a fixed margin business. They pay</p> <p>24 prices -- they pay a price to the farmers in</p> <p>25 August, and that it -- the net of that came in</p>	<p style="text-align: right;">Page 124</p> <p>1 "Set price at fixed margin, penny profit margin,</p> <p>2 not percentage." Do you see that?</p> <p>3 A Yeah.</p> <p>4 Q Do you have any understanding of what that means?</p> <p>5 A It sounds like it was a direct dollar markup -- or</p> <p>6 direct price markup, not a percentage markup.</p> <p>7 Q Do you have any understanding of -- well, do you</p> <p>8 see where it says "Set price paid to farmers in</p> <p>9 August"?</p> <p>10 A Yep.</p> <p>11 Q Do you have any understanding of how that price</p> <p>12 paid to farmers was determined?</p> <p>13 A I may have at one time, but I don't have a</p> <p>14 recollection now.</p> <p>15 Q Do you know what product lines Diamond has other</p> <p>16 than walnuts -- or had at this point in time?</p> <p>17 A In general terms, yes. I knew specifically at one</p> <p>18 time. My recollection is probably not great right</p> <p>19 now.</p> <p>20 Q Do you have a general recollection of what they</p> <p>21 sold at this point in time?</p> <p>22 A Yes.</p> <p>23 Q And what is that?</p> <p>24 A They had Pop Secret, they had Kettle Chips. They</p> <p>25 had the Diamond snack food business just beyond</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.April 04, 2013
125-128

<p>1 the walnuts, mixed nuts. That's all I can recall 2 right off the top of my head. 3 Q Now, how significant were those other businesses, 4 by which I mean the businesses other than, you 5 know, walnut products; how significant were those 6 businesses in your analysis of whether to invest 7 in Diamond? 8 A My recollection is it was the growth, the 9 prospects for growth, in those businesses that was 10 important. 11 Q And was the prospect of growth in those businesses 12 more important than -- in your opinion, than the 13 walnut business? 14 A I think I should restate something. You know, 15 "important" to the increase in private market 16 value or the potential decrease in private market 17 value. We weren't expecting a decrease in private 18 market value driven by the walnut business. 19 So if you're asking me the importance to 20 the upside of our private market case, the snack 21 food business was more important than the walnut 22 business, but they were both important to the 23 investment. 24 Q Okay. Can you turn to Page 1405? Do you see an 25 April 5, 2011 entry by Mr. Brower?</p>	<p>Page 125</p> <p>1 Q Do you have any knowledge of what those management 2 interactions were? 3 A None other than what we discussed earlier. 4 Q And that would be the other meetings with 5 management contained in this Exhibit 55; is that 6 right? 7 A I believe so, yes. 8 Q Now, further on in that paragraph, Mr. Brower 9 writes, "I think we should hold this doc in SX for 10 now. Actively gather more prospective on the 11 combination and make a critical assessment as to 12 how the go-forward story compares to that which we 13 bought into for SX a few weeks back." Do you see 14 that? 15 A Yeah, yep. 16 Q Do you know what the -- what he's referring to by 17 the "go-forward story"? 18 A I would assume he's talking about the Diamond -- 19 the prospect for Diamond after they acquire the 20 Pringles business from Procter & Gamble. 21 Q And he refers to "that which we bought into for SX 22 a few weeks back." Do you know what that refers 23 to? 24 A I would assume that means Diamond without any 25 knowledge of the Procter & -- the Pringles</p> <p>Page 127</p>
<p>1 A Yes. 2 Q And the first line of that entry says, "I'm 3 inclined to be skeptical, but the more I've 4 thought about -- the more I've thought through it, 5 the more I like the Pringles deal." Do you see 6 that? 7 A Yes. 8 Q Do you know what the "Pringles deal" refers to? 9 A Yes. 10 Q And what is that? 11 A The purchase from Procter & Gamble of their 12 Pringles brand potato chip business. 13 Q Was that -- was that announced acquisition 14 significant to your team's determination of 15 whether to invest in Diamond? 16 A Not initially, no. 17 Q On Page AP1406, do you see the paragraph starting, 18 "We don't have all the answers today"? 19 A Yes, yep. 20 Q And three lines into that paragraph, there's a 21 sentence that starts, "The difference today being 22 that we have a year of cumulative history behind 23 us and a few management interactions under our 24 belt." Do you see that? 25 A Yes.</p> <p>Page 126</p>	<p>1 acquisition. 2 Q Now, would a -- would the Pringles acquisition be 3 expected to accelerate Diamond's profits? 4 A Yeah, I would -- I would expect that our forward 5 private market value would incorporate enhanced 6 growth from that. 7 Q Does that mean that the private market value would 8 increase as compared to prior to this 9 announcement? 10 A That would be my assumption, yeah. 11 MR. CALOZA: Mark this as 58. 12 (Exhibit No. 58 is marked.) 13 BY MR. CALOZA: 14 Q Mr. Stephens, you've been handed a document marked 15 Exhibit 58, Bates stamped AP0000694 through 16 AP0000696. Do you recognize this document? 17 A Yes, I saw it when I was reviewing the file. 18 Q Do you recognize whose handwriting this is? 19 A I don't. 20 Q On Page AP694, it refers to "PG deal for Pringles" 21 at the top of the page. Do you see that? 22 A PG deal -- 23 Q In the third bullet -- 24 A -- 694. 25 Q -- point.</p> <p>Page 128</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
129-132

<p style="text-align: right;">Page 129</p> <p>1 A I'm sorry, I'm not seeing it. Oh, yeah, "PG 2 deal," yeah, yeah, yeah. 3 Q Does that indicate anything to you about the 4 timing of these notes? 5 A Yes. 6 Q What; what does that indicate? 7 A That information about a deal with Procter & 8 Gamble for Pringles was public information. 9 Q And then below on the same page it says, 10 "Franchise profit cycle and valuation." Do you 11 see that? 12 A Yep. 13 Q And those are factors in determining whether to 14 select a stock for investment; is that right? 15 A Yes. Let me see. Franchise, profit cycle and 16 valuation, yeah, yep. 17 Q And then to the right of that it says, "Blended 18 PMV E method." Do you see that? 19 A Yeah, yep. 20 Q What does the "E method" mean? 21 A The E method means that we can rely on free cash 22 flow to be close to earnings in the two periods 23 that we're looking at; in other words, the current 24 fiscal year and the forward fiscal year. 25 The normalized method means that there</p>	<p style="text-align: right;">Page 131</p> <p>1 Q If you turn to the last page of the Exhibit 58. 2 A Yeah. 3 Q It says, "Arb pressure heading into," and then 4 "short interest pop." Do you know what that 5 means? 6 A I know what each of those terms means. I'm not 7 sure what he's talking about specifically in this 8 situation. 9 Q What does "arb pressure" mean? 10 A My guess is he's saying that the arb -- 11 arbitrage-related strategies are either buying or 12 selling the stock in relation to a preset deal 13 price. 14 Q And would that affect the -- would that arbitrage 15 affect the market price of the stock? 16 A It may, or it may not. It just depends. 17 Q And what do you understand "short interest pop" to 18 mean? 19 A I understand it to mean that the level of short 20 interest has risen. I don't know if it's for 21 Diamond or for P&G or for some other company. 22 Q And if the level of short interest rises, how 23 would that affect the market price of the stock? 24 A If the level of short interest rises? 25 Q Correct.</p>
<p style="text-align: right;">Page 130</p> <p>1 will be a -- there will be a discrepancy between 2 reported earnings in cash flow and what the 3 potential cash flow will be in the out period, and 4 so you need to go out to the out period and 5 discount that back and ignore the two current 6 periods. So you're normalizing the earnings power 7 of the business. 8 Q I'm sorry, did you say you disregard the 9 current -- the two current periods? 10 A You -- you may. Yeah, what you would do is you 11 would go out to the terminal -- whatever that 12 terminal period is, use that free cash flow number 13 and discount it back to approximate what you think 14 the earnings should be versus what the reported 15 earnings or cash flow will be. 16 Q And why would there be a discrepancy between what 17 you think the earnings should be versus what the 18 reported earnings would be? 19 A There can be a number of reasons, but examples 20 would be a large acquisition that would take on a 21 great deal of goodwill or other 22 amortization-related expenses. 23 Q Is there a distinction between blended PMV and 24 probability-weighted PMV? 25 A No.</p>	<p style="text-align: right;">Page 132</p> <p>1 A I can't generalize. 2 MR. CALOZA: Could you mark this as 3 Exhibit 59? 4 (Exhibit No. 59 is marked.) 5 BY MR. CALOZA: 6 Q Mr. Stephens, you've been handed a document marked 7 Exhibit 59. 8 A Uh-huh. 9 Q And the first page bears Bates No. AP0001773, and 10 I will represent to you that this is a -- this is 11 printed from a spreadsheet provided to Diamond in 12 native Excel format, and that I have printed the 13 pitch PMV consolidated P&L and segment P&L tabs 14 from that natively produced spreadsheet. 15 A And it was provided to Diamond? 16 Q Correct. 17 MR. WYLIE: In this litigation. 18 THE WITNESS: Oh, okay. 19 MR. CALOZA: Thank you for that 20 clarification. 21 BY MR. CALOZA: 22 Q If you'll look at the second page of this exhibit, 23 it's dated March 30, 2010. Do you see that? 24 A Yeah. 25 Q And it is -- appears to be similar to the pitch</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
133-136

<p style="text-align: right;">Page 133</p> <p>1 packet that was Exhibit 54. Do you see that?</p> <p>2 A Exhibit 54. Yes.</p> <p>3 Q And if you turn to the third page, there is</p> <p>4 another expected value chart. Do you see that?</p> <p>5 A Third page, including the cover page --</p> <p>6 Q Correct.</p> <p>7 A -- yeah, yeah.</p> <p>8 Q And the date of that chart is April 13, 2011. Do</p> <p>9 you see that?</p> <p>10 A Yes, yep.</p> <p>11 Q Now, in this expected value chart, do you know</p> <p>12 the -- do you see that there are estimates for</p> <p>13 Fiscal '11, Fiscal '12 and Fiscal '13?</p> <p>14 A Yes.</p> <p>15 Q Do you know what the basis of those numbers are --</p> <p>16 well, strike that. Let me ask a different</p> <p>17 question: Do you know whether Diamond was issuing</p> <p>18 estimates for Fiscal '11, Fiscal '12 and Fiscal</p> <p>19 '13 at this time?</p> <p>20 A I have no idea.</p> <p>21 Q In your experience, is it usual or typical for a</p> <p>22 company to issue estimates three fiscal years out?</p> <p>23 A It's hard to say. They may, in combination with a</p> <p>24 large transaction, do something like that, but</p> <p>25 it's hard to say.</p>	<p style="text-align: right;">Page 135</p> <p>1 A I don't.</p> <p>2 Q Do you see where it says, "guidance" to the right</p> <p>3 in blue, and underneath it says, "925 to 950 M"?</p> <p>4 A Yes.</p> <p>5 Q Do you know what that refers to?</p> <p>6 A I don't specifically.</p> <p>7 Q Do you have a general understanding?</p> <p>8 A I do.</p> <p>9 Q And what is that?</p> <p>10 A It's lined up against the Fiscal '11 estimate row,</p> <p>11 and I would guess that it's guidance from the</p> <p>12 company for the Fiscal '11 year that ends in July,</p> <p>13 although it's in blue, so I don't know if it's</p> <p>14 a -- his estimate or the company estimate.</p> <p>15 Q And do you see where it says "consensus"?</p> <p>16 A I do.</p> <p>17 Q Do you know what that refers to?</p> <p>18 A I know what "consensus" means, but I don't know</p> <p>19 what it means in this situation.</p> <p>20 Q Do you see where it says "annualized PMV"?</p> <p>21 A Annualized PMV? Yes, I do.</p> <p>22 Q You previously testified that annualized PMV is a</p> <p>23 365-day measure of private market value; is that</p> <p>24 right?</p> <p>25 A It should be, yes, yeah.</p>
<p style="text-align: right;">Page 134</p> <p>1 Q Do you have any understanding as to whether</p> <p>2 Diamond did so prior to April 13, 2011?</p> <p>3 A Not off the top of my head, no.</p> <p>4 Q If those numbers are not based on guidance issued</p> <p>5 by Diamond, what else might they be based on?</p> <p>6 MR. WYLIE: Objection. Calls for</p> <p>7 speculation.</p> <p>8 BY MR. CALOZA:</p> <p>9 Q You can answer.</p> <p>10 A Well, given that it's in our model, Rod would have</p> <p>11 most likely put it together from his usual sources</p> <p>12 of external research, internal research.</p> <p>13 Q And would these numbers represent Mr. Brower's</p> <p>14 best estimate of revenue for Fiscal '11, '12 and</p> <p>15 '13, in his judgment?</p> <p>16 MR. WYLIE: Objection. Foundation.</p> <p>17 THE WITNESS: I take objection to the</p> <p>18 term "best." I think they're probably estimates</p> <p>19 that he used.</p> <p>20 BY MR. CALOZA:</p> <p>21 Q Okay. And, well, do you know how he arrived at</p> <p>22 those estimates?</p> <p>23 A I don't.</p> <p>24 Q And do you know if they were based on Diamond's</p> <p>25 public statements?</p>	<p style="text-align: right;">Page 136</p> <p>1 Q Now, do you see that there are three fiscal years</p> <p>2 listed right above it: Fiscal '11, Fiscal '12 and</p> <p>3 Fiscal '13?</p> <p>4 A Yes.</p> <p>5 Q How do you calculate an annualized PMV when there</p> <p>6 are more than one -- when there are values for</p> <p>7 more than one fiscal year?</p> <p>8 A We use a math function within the spreadsheet that</p> <p>9 references -- you see the fiscal year over here on</p> <p>10 the right side, 7/31/2011?</p> <p>11 Q Uh-huh, yes.</p> <p>12 A It looks at the date, today's date, whatever that</p> <p>13 date was on this spreadsheet, and it figures out</p> <p>14 how many days are left in this fiscal year and</p> <p>15 applies that much to the current year. And then</p> <p>16 it takes the remaining number of days, that minus</p> <p>17 365, and applies it to the forward year and comes</p> <p>18 up with that.</p> <p>19 What I don't know is when you opened</p> <p>20 this up in your Excel spreadsheet and printed it</p> <p>21 out, whether it was using the date that you opened</p> <p>22 it or whether it used the date that was referenced</p> <p>23 on this document. I'd have to do the math to</p> <p>24 crosscheck that.</p> <p>25 Q But it would be a combination of Fiscal '11 and</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.April 04, 2013
137-140

<p style="text-align: right;">Page 137</p> <p>1 Fiscal '12?</p> <p>2 A If the date of April 13th, 2011, is correct, yes.</p> <p>3 Q Do you see next to target range, it says, "Add 48"</p> <p>4 and then "trim 64"?</p> <p>5 A Yes.</p> <p>6 Q If the market price were \$48 -- well, let me back</p> <p>7 up. What is the weighted private market value</p> <p>8 calculated in this chart?</p> <p>9 A According to this with the 10 percent probability</p> <p>10 in the bear case, a 55 percent probability of the</p> <p>11 base case and a 35 percent probability of the bull</p> <p>12 case, the weighted private market value is \$80.</p> <p>13 Q And do you know the basis for determining the bear</p> <p>14 case as a 10 percent probability?</p> <p>15 A I do not. I'm sure I did at the time. I don't</p> <p>16 recall right now.</p> <p>17 Q And is it based on Mr. Brower's judgment of the</p> <p>18 likelihood of the bear case?</p> <p>19 A Based on my understanding of the state of this</p> <p>20 document, yes.</p> <p>21 Q Okay. And similarly, his estimate of the</p> <p>22 probability of the bull case, 35 percent, would be</p> <p>23 based on his judgment?</p> <p>24 A Yes.</p> <p>25 Q Now, if the weighted private market value is \$80,</p>	<p style="text-align: right;">Page 139</p> <p>1 Q How would you characterize it?</p> <p>2 A It would be a 40 percent discount to our computed</p> <p>3 weighted private market value.</p> <p>4 Q Are you testifying that the target range indicated</p> <p>5 on this document has no bearing on whether to</p> <p>6 invest in Diamond securities?</p> <p>7 A I did not testify that it has no bearing.</p> <p>8 Q What is --</p> <p>9 A I testified that it is not the only bearing.</p> <p>10 Q How significant is the target range indicated on</p> <p>11 this document?</p> <p>12 A How significant is it?</p> <p>13 Q Yes.</p> <p>14 A It's a -- it's a range. It's a static range. It</p> <p>15 goes from 60 percent of the weighted private</p> <p>16 market value to 80 percent of the private market</p> <p>17 value. It's the same -- it's the same range.</p> <p>18 Q What is the purpose of identifying that 60- to 80</p> <p>19 percent range?</p> <p>20 A So that we know -- so that we don't have to do the</p> <p>21 math in our head to understand the discount to</p> <p>22 private market value. So that we understand the</p> <p>23 range.</p> <p>24 Q And the level of discount to private market value</p> <p>25 is a factor in determining whether to purchase</p>
<p style="text-align: right;">Page 138</p> <p>1 would \$48 be -- would \$48 be an attractive</p> <p>2 discount to that weighted private market value?</p> <p>3 MR. WYLIE: Objection. Form. Vague.</p> <p>4 BY MR. CALOZA:</p> <p>5 Q Do you understand the question?</p> <p>6 A It may not be a realistic discount.</p> <p>7 Q But would it be an attractive discount in terms of</p> <p>8 what -- determining whether or not to purchase</p> <p>9 Diamond securities?</p> <p>10 MR. WYLIE: Objection. Form. Vague.</p> <p>11 THE WITNESS: It's -- it would only be</p> <p>12 one contributing factor in that analysis.</p> <p>13 BY MR. CALOZA:</p> <p>14 Q But would it -- would it -- I understand that</p> <p>15 there may be multiple factors, but if Artisan's</p> <p>16 estimate of private market value is \$80 and the</p> <p>17 stock is trading at \$48, is that a -- would that</p> <p>18 be an attractive discount level in determining</p> <p>19 whether to purchase Diamond securities?</p> <p>20 MR. WYLIE: I'll object. Form. Vague.</p> <p>21 I'll also object asked and answered.</p> <p>22 BY MR. CALOZA:</p> <p>23 Q You may answer.</p> <p>24 A I would not characterize it -- I would not use the</p> <p>25 term "attractive."</p>	<p style="text-align: right;">Page 140</p> <p>1 Diamond securities?</p> <p>2 A It is one factor of many.</p> <p>3 MR. CALOZA: Do you want to go off the</p> <p>4 record?</p> <p>5 MR. WYLIE: Yeah, we've been going for a</p> <p>6 little over an hour anyway. We may as well take a</p> <p>7 five-minute break.</p> <p>8 THE VIDEOGRAPHER: This is the end of</p> <p>9 Disc No. 2. We are off the record at 1:46 p.m.</p> <p>10 (A brief recess is taken.)</p> <p>11 THE VIDEOGRAPHER: We are back on the</p> <p>12 record at 1:56 p.m.</p> <p>13 BY MR. CALOZA:</p> <p>14 Q Mr. Stephens, could you turn to Page AP1401 of</p> <p>15 Exhibit 55?</p> <p>16 A Exhibit 55.</p> <p>17 Q I'm sorry. It's --</p> <p>18 MR. WYLIE: No, no, that's right.</p> <p>19 THE WITNESS: 55. 55. What number?</p> <p>20 Sorry.</p> <p>21 BY MR. CALOZA:</p> <p>22 Q Sorry. I meant Page 1405.</p> <p>23 A Yep.</p> <p>24 Q Do you see that there is an April 27, 2011 entry,</p> <p>25 by Rod Brower?</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
141-144

<p style="text-align: right;">Page 141</p> <p>1 A Yes. Which? The -- the notes or the -- I'm 2 sorry, go ahead. 3 Q And there's a summary, and underneath the summary 4 it says, "Updating the PMV based on our Pringles 5 transaction discussion from a couple weeks ago and 6 the updated financials that accompanied that 7 review." 8 A Yep. 9 Q Do you know who was -- what that discussion refers 10 to? 11 A Not specifically, no. 12 Q Do you know whether that is an internal Artisan 13 discussion? 14 A That would be my assumption. 15 Q And it says, "The net impact is \$12 increase in 16 the PMV, \$68 goes to \$80." Do you see that? 17 A Yep. 18 Q Do you know whether that \$12 increase was -- 19 strike that. 20 Do you know whether the prior PMV value 21 of \$68 was calculated before or after the Pringles 22 transaction was announced? 23 A I don't know. Not without reading through all of 24 this. I don't know. 25 Q And later on in that paragraph it says, "A 10</p>	<p style="text-align: right;">Page 143</p> <p>1 Q And so would it -- relative to Artisan's estimate 2 of private market value, a pullback would -- in 3 the price would allow Artisan to purchase the 4 stock for a better value; is that right? 5 A According to this, it would allow us to consider 6 Diamond for MX. 7 Q But a cheaper stock relative to Artisan's estimate 8 of private market value would represent a greater 9 value; is that right? 10 MR. WYLIE: Object to form. 11 BY MR. CALOZA: 12 Q Do you understand the question? 13 A Restate the question. 14 Q If Artisan is able to purchase Diamond stock for a 15 greater discount as a result of a pullback, does 16 that mean that Artisan can purchase the stock for 17 a greater value as compared to without a pullback? 18 MR. WYLIE: I'll object to form. Vague. 19 Compound. 20 BY MR. CALOZA: 21 Q Do you understand the question? 22 A I don't think you've defined "value" for me. It 23 has many meanings. 24 Q Could Artisan purchase the stock for cheaper 25 than -- well, let me ask it this way: A pullback</p>
<p style="text-align: right;">Page 142</p> <p>1 percent LTG for Diamond prior to PMV update, that 2 was probably too conservative." Do you see that? 3 A Yes. Yep. 4 Q What was too conservative? 5 A I don't recall. And it doesn't -- it doesn't 6 spell it out for me here. 7 Q And then below that, it says -- in the next 8 paragraph it says, "I am still considering Diamond 9 for MX and hoping for a pullback to do so." Do 10 you see that? 11 A Yep. 12 Q What does that mean? 13 A It means that he's still considering recommending 14 Diamond for inclusion in the mid-cap growth 15 composite portfolios and that he's hoping for a 16 pullback in the price to do that. 17 Q And would a pullback in the price affect Artisan's 18 estimate of private market value? 19 A It would not affect our estimate of private market 20 value. 21 Q Would it affect the discount between Artisan's 22 estimate of private market value and the market 23 price? 24 A If there was a pullback, the discount would be 25 wider, yes.</p>	<p style="text-align: right;">Page 144</p> <p>1 does not affect Artisan's estimate of private 2 market value; is that right? 3 A Depends. 4 Q Well, how would a pullback in the price affect 5 Artisan's estimate of private market value? 6 A It depends on what drove the pullback in the 7 price. If there was new information, if something 8 else -- something else happened that made us 9 reconsider our investment case, we may, in fact, 10 change our private market value. 11 Q If a pullback occurs in the absence of additional 12 information, would that affect Artisan's estimate 13 of private market value? 14 A No. 15 Q And so absent additional information, the change 16 in market price is -- is that even relevant to 17 Artisan's estimate of private market value? 18 A The pullback in price absent any -- 19 Q Additional information. 20 A -- additional information at all would have no 21 bearing on our private market value. 22 Q Could you turn to Page AP1401? 23 MR. WYLIE: 1401? 24 MR. CALOZA: 1401. 25 BY MR. CALOZA:</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
145-148

<p style="text-align: right;">Page 145</p> <p>1 Q Do you see an entry for June 2nd, 2011, by Rod 2 Brower? 3 A Yes. 4 Q And in the second paragraph -- well, let me back 5 up. Do you understand the context for this entry 6 on June 2, 2011? 7 A I would have to read the whole thing to answer 8 that question. Would you like me to do that? 9 Q Could you read the summary portion of this note? 10 A I believe, based on the summary, that they 11 reported their financial results for probably the 12 third quarter -- third fiscal quarter. 13 Q Okay. And if you look at the second paragraph, on 14 the second line it says, "Management pulled 15 forward its LT guidance by one year saying it 16 expects to reach \$4 in EPS by Fiscal '14 versus 17 Fiscal '15 prior. Quite frankly, my guess is the 18 street was already there to a large extent 19 explaining the stock's recent run." Do you see 20 that? 21 A Yeah, yep. 22 Q When it refers to "the street already being there 23 to a large extent," do you know what that refers 24 to? 25 A Not in this specific instance.</p>	<p style="text-align: right;">Page 147</p> <p>1 paragraph? 2 A Let me see here. "Management afforded its 3 long-term vent by one-year goal saying expects to 4 reach \$4 in by Fiscal '14, versus prior. For what 5 it's worth, our base case estimate when we did -- 6 by four cents, it appear. 7 Q So Artisan believed that -- or Mr. Brower 8 estimated that Fiscal '14 would exceed the 9 guidance issued by management; is that right? 10 A By four cents. 11 Q And Mr. Brower's -- the estimate referenced by 12 Mr. Brower there, was that before management's 13 updated guidance? 14 A Based on this, I would assume, yes. 15 Q So does that mean Artisan -- does that mean that 16 Mr. Brower was more optimistic about Diamond's 17 future prospects than management's guidance? 18 A I think it's immaterial. It's one percent. I 19 can't -- I can't conclude. 20 Q If you look at the last sentence on the page, it 21 says, "From a timing perspective, I've learned 22 from watching Diamond over the past year too that 23 there's a good chance that some point of 24 controversy will arise along the way that gives us 25 an opportunity to add to our SX position or</p>
<p style="text-align: right;">Page 146</p> <p>1 Q Later on in that paragraph it says, "Management 2 has a tendency to guide conservatively, so I would 3 guess the new target is beatable." Do you see 4 that? 5 A Do you mean, after the in addition they needed to 6 put up a -- I said, "following, in addition, they 7 needed to put up a strong print ahead of the 8 Pringles deal. That said, management has a 9 tendency to guide conservatively, so I would guess 10 the new target is beatable"? 11 Q Yes. Do you have any understanding about whether 12 management did -- whether management was 13 conservative in its guidance? 14 A I have no idea. 15 Q Do you have any understanding historically whether 16 management tended to guide conservatively? 17 A No idea. 18 Q And that paragraph goes on to say, "For what it's 19 worth, our base case Fiscal '14 estimate, when we 20 did our dive on valuation post Pringles 21 announcement, was \$4.04. Bull case is \$5.35." Do 22 you see that? 23 A Yep. 24 Q And is that -- does that exceed the guidance 25 issued by management noted earlier in that</p>	<p style="text-align: right;">Page 148</p> <p>1 initiate one in MX on a pullback." Do you see 2 that? 3 A Yes. 4 Q Do you know what the reference to "controversy" 5 is? 6 A I don't specifically, no. 7 Q Do you have any general understanding of what that 8 reference to "prior controversies" is? 9 MR. WYLIE: I will object to the extent 10 that it misstates the contents of the document. 11 BY MR. CALOZA: 12 Q Do you understand the question? 13 A Repeat it, please. 14 Q Well, this document refers to "a good chance that 15 some point of controversy will arise along the 16 way." Do you see that? 17 A Yes. 18 Q Do you understand the basis for that statement? 19 A I think he means that there's a lot of news flow 20 in this company, which tends to create volatility 21 in the public share price. 22 Q Why would a lot of news flow tend to create 23 volatility? 24 A Well, as I testified earlier, it's my belief that 25 other investors come to their own conclusions over</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.April 04, 2013
149-152

<p>Page 149</p> <p>1 different points of information. So the more</p> <p>2 information there is coming into the market, the</p> <p>3 more volatile a stock is, typically.</p> <p>4 Q And Artisan is one such investor coming to its own</p> <p>5 conclusion regarding news; is that right?</p> <p>6 A I believe so, yes.</p> <p>7 Q If you continue to Page AP1403, underneath the Q&A</p> <p>8 section?</p> <p>9 A Uh-huh.</p> <p>10 Q It says, "Walnut accrual adjustment was 70 basis</p> <p>11 points which was opposite direction than fiscal --</p> <p>12 than FQ 2." Do you understand what that means?</p> <p>13 A I have a recollection of what it means. I may be</p> <p>14 off on the details.</p> <p>15 Q And what is your recollection?</p> <p>16 A That they -- since they make a -- I believe it's a</p> <p>17 few, if not only one payment, to their growers.</p> <p>18 And the price changes throughout the period that</p> <p>19 they accrue what they believe the payment will be,</p> <p>20 the final total of what the payment will be. And</p> <p>21 there was a 70-basis-point adjustment to that</p> <p>22 accrual. It doesn't tell me whether it's -- I'm</p> <p>23 assuming it's a positive 70 basis points, but it's</p> <p>24 hard for me to tell from this.</p> <p>25 Q Do you understand why the price would change</p>	<p>Page 151</p> <p>1 A First of all, it was conjecture on my part based</p> <p>2 on reading something that Rod gave to me whether</p> <p>3 it was included in the DDM or someplace else.</p> <p>4 Second of all, it was my quick summary</p> <p>5 of high-level observation of what I thought was</p> <p>6 going on with this transaction.</p> <p>7 Q What do you mean by Diamond needed a better</p> <p>8 currency?</p> <p>9 A That they couldn't afford the Pringles transaction</p> <p>10 at the time they hatched the plan, in my</p> <p>11 estimation; again, conjecture, and that they</p> <p>12 needed to improve their stock price.</p> <p>13 Q And why would they need to improve their stock</p> <p>14 price?</p> <p>15 A This is just -- again, just my recollection, but</p> <p>16 because Pringles was a very expensive transaction</p> <p>17 for a small company like Diamond.</p> <p>18 Q Did you think that -- did you think that the</p> <p>19 expense affected the likelihood of the transaction</p> <p>20 closing?</p> <p>21 A I would not conclude that from what I wrote here.</p> <p>22 Q Do you see on Page AP1400 a September 9, 2011</p> <p>23 entry, by Jessica Gelhar?</p> <p>24 A I'm sorry, 1400. On which day? September 15th?</p> <p>25 Q September 9.</p>
<p>Page 150</p> <p>1 throughout the period?</p> <p>2 A I did at one time. I don't recall today.</p> <p>3 Q Do you know whether the payments made to growers</p> <p>4 are based on an estimate of the ultimate price?</p> <p>5 A I don't know that right now. I probably did at</p> <p>6 one time.</p> <p>7 Q Could you please turn to Page AP1400? Do you see</p> <p>8 a June 22 entry by Mr. Brower?</p> <p>9 A Yes.</p> <p>10 Q You see that he has pasted an email from him to</p> <p>11 you with a CC to Mr. Cepukenas?</p> <p>12 A Yes.</p> <p>13 Q And below that is an email from you to Mr. Brower</p> <p>14 and Mr. Cepukenas?</p> <p>15 A Yes.</p> <p>16 Q In your email, it says, "Sounds to me -- sounds to</p> <p>17 me like PG cleaned Pringles up before they made</p> <p>18 the sale. The two companies probably have to plan</p> <p>19 in 2010. Diamond needed a better currency, and</p> <p>20 P&G needed better financials. Makes me worry</p> <p>21 about how much low-hanging fruit is really left</p> <p>22 here." Do you have any understanding of what that</p> <p>23 means?</p> <p>24 A Yes.</p> <p>25 Q What is your understanding?</p>	<p>Page 152</p> <p>1 A September 9, yeah, yep.</p> <p>2 Q And it refers to the Barclays BTS conference. Do</p> <p>3 you know what "BTS" stands for?</p> <p>4 A I think it's "back to school."</p> <p>5 Q And underneath that it says, "General presentation</p> <p>6 plus small group meeting with CEO, CFO, CSO." Do</p> <p>7 you know whether Ms. Gelhar met with Diamond</p> <p>8 management at this conference?</p> <p>9 A That would be my assumption based on what she</p> <p>10 wrote here.</p> <p>11 Q And CEO stands for chief executive officer; is</p> <p>12 that right?</p> <p>13 A Yes.</p> <p>14 Q CFO stands for chief financial officer?</p> <p>15 A Yes.</p> <p>16 Q What does CSO stand for?</p> <p>17 A I don't know.</p> <p>18 Q Do you know if Ms. Gelhar met with any other</p> <p>19 members of Diamond's management?</p> <p>20 A I don't.</p> <p>21 Q Other than what appears on Page AP1400, do you</p> <p>22 know the contents of that discussion?</p> <p>23 A I don't have any recollection, no.</p> <p>24 Q Could you turn to Page AP1399? Do you see an</p> <p>25 October 6, 2011 entry, by Mr. Brower?</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
153-156

<p style="text-align: right;">Page 153</p> <p>1 A October 6. Yep, got it.</p> <p>2 Q And towards the bottom of that entry it says, "I</p> <p>3 feel like we should be adding to this one on</p> <p>4 recent pullback." And towards the end of that</p> <p>5 paragraph it says, "That said, to the extent that</p> <p>6 this pullback is related to the Walnut-Gate</p> <p>7 controversy, I'll take the other side." Do you</p> <p>8 know what "Walnut-Gate controversy" refers to?</p> <p>9 A I don't recall all the specifics.</p> <p>10 Q Do you have a general recollection?</p> <p>11 A I do.</p> <p>12 Q And what is it?</p> <p>13 A My summary of it would be that the company</p> <p>14 underpaid their walnut growers so they could</p> <p>15 inflate their profitability to keep their stock</p> <p>16 price high to conclude the Pringles transaction.</p> <p>17 That may be jumbling together facts from the time</p> <p>18 of this note and things that have happened since</p> <p>19 then, but that's my understanding of it.</p> <p>20 Q Do you know when Mr. Brower became aware of the</p> <p>21 Walnut-Gate controversy?</p> <p>22 A I'm sure it's in here somewhere. It's when --</p> <p>23 it's probably when other participants in the</p> <p>24 market became aware of it.</p> <p>25 Q And do you have any recollection of when that is?</p>	<p style="text-align: right;">Page 155</p> <p>1 A Yes, yep.</p> <p>2 Q And is that an order to buy five -- well, could</p> <p>3 you -- could you tell me what that -- what</p> <p>4 Mr. Cepukenas' entry means?</p> <p>5 A Let me see. It looks like a trade order in our</p> <p>6 internal system to buy five basis points to a</p> <p>7 target of 119 basis points with no limit in the</p> <p>8 small cap portfolio. What I don't know is what</p> <p>9 time of day this was entered.</p> <p>10 Q Do you know whether Mr. Cepukenas or yourself saw</p> <p>11 this Wall Street journal article, Exhibit 60,</p> <p>12 before making those trades?</p> <p>13 A I don't have any specific recollection.</p> <p>14 Q Do you --</p> <p>15 A It doesn't have any commentary, so I don't know.</p> <p>16 Q Returning to the October 6 entry by Mr. Brower, he</p> <p>17 says that he'll take the other side in the walnut</p> <p>18 gate controversy. Do you see that?</p> <p>19 A Yeah, yep.</p> <p>20 Q Do you know whether Mr. Brower believed there was</p> <p>21 an issue with the -- with Diamond's accounting for</p> <p>22 walnuts at the time he wrote this note?</p> <p>23 A The question was what? I'm sorry.</p> <p>24 Q Mr. Brower says, "I'll take the other side."</p> <p>25 A Right.</p>
<p style="text-align: right;">Page 154</p> <p>1 A My recollection is there was an article in the</p> <p>2 national press somewhere that highlighted the</p> <p>3 issue. That was the first -- I think that was the</p> <p>4 first instance of it.</p> <p>5 MR. CALOZA: Could you mark this as</p> <p>6 Exhibit 60?</p> <p>7 (Exhibit No. 60 is marked.)</p> <p>8 BY MR. CALOZA:</p> <p>9 Q Mr. Stephens, you've been handed a document marked</p> <p>10 Exhibit 60. It's Bates stamped MSPERS 001573 to</p> <p>11 MSPERS 001575. Do you recognize this document?</p> <p>12 A Not this specific document, but I recognize it as</p> <p>13 an online article from the Wall Street Journal, or</p> <p>14 a reprint of it.</p> <p>15 Q Now, you referred to an article in the national</p> <p>16 press. Could this be the article you were</p> <p>17 thinking about?</p> <p>18 A It probably was.</p> <p>19 Q And this article is dated September 27, 2011; is</p> <p>20 that right?</p> <p>21 A Yes.</p> <p>22 Q Now, if you look on Page AP1399 of Exhibit 55 --</p> <p>23 A Yep.</p> <p>24 Q -- there is a September 27, 2011 entry, by both</p> <p>25 Mr. Cepukenas and yourself; do you see that?</p>	<p style="text-align: right;">Page 156</p> <p>1 Q My question is whether you know if he believed</p> <p>2 that there was any problem with Diamond's</p> <p>3 accounting for walnuts at the time that he wrote</p> <p>4 this note?</p> <p>5 A I don't know what he believed.</p> <p>6 Q Well --</p> <p>7 A I know that in his -- according to this, as he</p> <p>8 weighed the probabilities, he seemed to believe</p> <p>9 that it -- at that point in time, it was not a</p> <p>10 significant issue.</p> <p>11 Q And when you say "he weighed the probabilities,"</p> <p>12 what do you mean by that?</p> <p>13 A I think that he did not believe that it was much</p> <p>14 more than the normal course of business, and --</p> <p>15 yeah.</p> <p>16 Q I'm not sure I understood your response. When</p> <p>17 you're referring to it -- when you say that he did</p> <p>18 not think that it was much more than the normal</p> <p>19 course of business, are you saying that he did not</p> <p>20 believe it was -- that he did not believe that the</p> <p>21 controversy was a significant issue?</p> <p>22 MR. WYLIE: Object to the form.</p> <p>23 THE WITNESS: Yeah, I'm saying that I</p> <p>24 don't know what he believed. I think he -- my</p> <p>25 guess is he thought if there was a controversy,</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.April 04, 2013
157-160

<p style="text-align: right;">Page 157</p> <p>1 there was an issue, it was immaterial, and,</p> <p>2 therefore, not -- not something to change his</p> <p>3 private market value over.</p> <p>4 BY MR. CALOZA:</p> <p>5 Q So if it's not something to change his private</p> <p>6 market value over, would it affect his decision on</p> <p>7 whether or not to invest in Diamond?</p> <p>8 MR. WYLIE: Object. Form. Assumes</p> <p>9 facts not in evidence.</p> <p>10 BY MR. CALOZA:</p> <p>11 Q You may answer the question.</p> <p>12 A Restate the question, please.</p> <p>13 Q You testified that -- strike that.</p> <p>14 Now, if you continue reading</p> <p>15 Mr. Brower's entry, it says, "It's less than 10</p> <p>16 percent of profits and getting smaller post</p> <p>17 Pringles transaction." Do you know what that</p> <p>18 refers to?</p> <p>19 A I believe it refers to the walnut business and his</p> <p>20 understanding of it, contribution to the</p> <p>21 profitability of Diamond.</p> <p>22 Q And is that consistent -- strike that.</p> <p>23 Mr. Stephens, if you look again at the</p> <p>24 October 6 entry on Page AP1339, there is an order</p> <p>25 to buy five basis points of Diamond stock.</p>	<p style="text-align: right;">Page 159</p> <p>1 A I'd be guessing.</p> <p>2 MR. CALOZA: Can we go off the record?</p> <p>3 THE VIDEOGRAPHER: We are off the record</p> <p>4 at 2:37 p.m.</p> <p>5 (A brief recess is taken.)</p> <p>6 THE VIDEOGRAPHER: We are back on the</p> <p>7 record at 2:49 p.m.</p> <p>8 BY MR. CALOZA:</p> <p>9 Q Mr. Stephens, prior to the break, I was asking you</p> <p>10 about Exhibit 61.</p> <p>11 A Yes.</p> <p>12 Q And the handwritten notes on Page 334, AP334.</p> <p>13 A Yes.</p> <p>14 Q And you testified that you don't recognize this</p> <p>15 handwriting; is that correct?</p> <p>16 A That's correct.</p> <p>17 Q This was produced to us by Artisan. Do you have</p> <p>18 any reason to believe that these notes are not in</p> <p>19 Diamond's research -- or Artisan's research file</p> <p>20 regarding Diamond?</p> <p>21 A No.</p> <p>22 Q Do you know anybody at Artisan who is</p> <p>23 knowledgeable about these notes?</p> <p>24 A I know the people who should be knowledgeable.</p> <p>25 Q And who is that?</p>
<p style="text-align: right;">Page 158</p> <p>1 A Uh-huh.</p> <p>2 Q Is that right?</p> <p>3 A Yes.</p> <p>4 Q Do you know what the rationale was for that</p> <p>5 purchase?</p> <p>6 A I believe it was captured in Rod's summary that we</p> <p>7 just went over.</p> <p>8 Q And so -- well, strike that.</p> <p>9 MR. CALOZA: Could you mark this as</p> <p>10 Exhibit 61?</p> <p>11 (Exhibit No. 61 is marked.)</p> <p>12 BY MR. CALOZA:</p> <p>13 Q Mr. Stephens, you've been handed an Exhibit marked</p> <p>14 61. It's Bates stamped AP0000333 to AP0000334.</p> <p>15 Do you recognize this document?</p> <p>16 A Unfortunately, no.</p> <p>17 Q Do you know whether the second page, AP334,</p> <p>18 relates to Diamond?</p> <p>19 A I can't say for certain.</p> <p>20 Q Do you recognize --</p> <p>21 A I think it does, but I can't say for certain.</p> <p>22 Q Do you recognize the handwriting on Page AP334?</p> <p>23 A I don't.</p> <p>24 Q Do you have any understanding of the context in</p> <p>25 which this document was created?</p>	<p style="text-align: right;">Page 160</p> <p>1 A The same people that we've talked about today:</p> <p>2 either Rod Brower, Martin Jochmann, Jess Gelhar,</p> <p>3 Craigh Cepukenas, Matt Kamm or myself.</p> <p>4 Q Did you ask any of those individuals about the</p> <p>5 contents of these notes?</p> <p>6 A No. I testified earlier that I did not speak to</p> <p>7 anybody about this deposition.</p> <p>8 Q Now, this Page AP334 in the lower right refers to</p> <p>9 a continuity payment. Do you see that?</p> <p>10 A I see -- I can't tell if it's contingency or</p> <p>11 continuity, but, yeah, I see something.</p> <p>12 Q Do you recall anyone discussing a continuity</p> <p>13 payment with you?</p> <p>14 A I have no specific recollection.</p> <p>15 Q Do you have a general recollection?</p> <p>16 A The term is familiar.</p> <p>17 Q And below that, I think it says, "Momentum</p> <p>18 payment." Do you have any recollection of any</p> <p>19 discussion regarding a momentum payment?</p> <p>20 A I have no specific recollection.</p> <p>21 Q Do you have a general recollection?</p> <p>22 A I recognize the term.</p> <p>23 Q And what does the term mean?</p> <p>24 A Momentum payment.</p> <p>25 Q Do you have any understanding of what momentum</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
161-164

<p style="text-align: right;">Page 161</p> <p>1 payment means?</p> <p>2 A Not at this time.</p> <p>3 Q And do you have any understanding of what</p> <p>4 continuity payment means?</p> <p>5 A Not at this time.</p> <p>6 Q So do you have any information about the context</p> <p>7 of this document?</p> <p>8 A I don't. There's not a date on it. There's not a</p> <p>9 name on it, and it's on the back of a Coach</p> <p>10 earnings report document, so it's confusing to me.</p> <p>11 MR. CALOZA: Counsel, Mr. Stephens has</p> <p>12 not been able to testify as to any of the</p> <p>13 handwritten notes in Artisan's production. One of</p> <p>14 the deposition topics that we noticed was</p> <p>15 documents regarding, relating to or referring to</p> <p>16 Diamond, which I think under any reasonable</p> <p>17 interpretation includes the handwritten notes</p> <p>18 regarding Diamond produced by Artisan. Is there</p> <p>19 any -- do you have any witness prepared to testify</p> <p>20 on Artisan's behalf regarding these notes?</p> <p>21 MR. WYLIE: No. We objected to that</p> <p>22 topic. We did not agree to produce somebody on</p> <p>23 behalf of Artisan prepared to testify as to that</p> <p>24 topic, and you knew that fact before today's</p> <p>25 deposition began.</p>	<p style="text-align: right;">Page 163</p> <p>1 Q Do you know whether these notes reflect a</p> <p>2 conversation?</p> <p>3 A I have no idea.</p> <p>4 Q And do these notes reflect any information</p> <p>5 released by Diamond?</p> <p>6 A Again, I have no information.</p> <p>7 Q Are you aware whether Diamond announced an</p> <p>8 internal investigation into payments to walnut</p> <p>9 growers?</p> <p>10 A My recollection is that there was a reference to</p> <p>11 it somewhere in these documents.</p> <p>12 Q And do you recall any specifics about the internal</p> <p>13 investigation?</p> <p>14 A I'm sorry. Repeat that.</p> <p>15 Q Do you know what the internal investigation was</p> <p>16 about?</p> <p>17 A I believe it was about payments to walnut growers.</p> <p>18 Q Do you know any specifics?</p> <p>19 A No, my recollection is vague. I think there's a</p> <p>20 reference to it somewhere in here.</p> <p>21 Q Could you please turn to Page AP1397 in</p> <p>22 Exhibit 55? Do you see a November 2, 2011 entry,</p> <p>23 by Mr. Brower?</p> <p>24 A Yes.</p> <p>25 Q Do you see in the first paragraph it says, "GLW</p>
<p style="text-align: right;">Page 162</p> <p>1 MR. CALOZA: Counsel, you agreed to</p> <p>2 produce a witness who could testify as to both --</p> <p>3 as to the process by which Artisan Partners made</p> <p>4 the decisions to purchase and sell securities of</p> <p>5 Diamond in this account. Is it your position that</p> <p>6 these handwritten notes are irrelevant to that</p> <p>7 process?</p> <p>8 MR. WYLIE: No, I believe that</p> <p>9 Mr. Stephens has testified ably and competently as</p> <p>10 to that process.</p> <p>11 BY MR. CALOZA:</p> <p>12 Q Mr. Stephens, please turn to Exhibit 61, Page</p> <p>13 AP334.</p> <p>14 A Uh-huh.</p> <p>15 Q Do you see where it says, "Walnut sold into</p> <p>16 shelled walnut markets?</p> <p>17 A Yeah, I can't make out what it says after that.</p> <p>18 Q Do you have any understanding of what that means?</p> <p>19 A Not specifically, no.</p> <p>20 Q Do you see the reference to a blog post seeking</p> <p>21 alpha?</p> <p>22 A Yes.</p> <p>23 Q Do you have any references -- do you have any</p> <p>24 understanding as to what that reference means?</p> <p>25 A Not specifically.</p>	<p style="text-align: right;">Page 164</p> <p>1 and I spoke with the company late yesterday, and</p> <p>2 I've debriefed with CAC."</p> <p>3 A JLW?</p> <p>4 Q Yes.</p> <p>5 A Yes.</p> <p>6 Q Who is JLW?</p> <p>7 A Jason L. White.</p> <p>8 Q And what does CAC refer to?</p> <p>9 A Craigh A. Cepukenas.</p> <p>10 Q Did Mr. Brower or Mr. White speak with you about</p> <p>11 the discussion with Diamond?</p> <p>12 A I don't see it referenced in here. I don't have a</p> <p>13 specific recollection.</p> <p>14 Q Do you have a general recollection of whether they</p> <p>15 discussed the contents of that conversation with</p> <p>16 you?</p> <p>17 A A general -- I'm sorry, did you ask me if I have a</p> <p>18 general --</p> <p>19 Q Do you have a general recollection whether they</p> <p>20 discussed the contents of their conversation with</p> <p>21 Diamond with you?</p> <p>22 A I can't -- it's hard for me to say now that I've</p> <p>23 read all of this. I don't have a recollection as</p> <p>24 I sit here of having that conversation.</p> <p>25 Q Now, if you read the entry, it says, "Diamond</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
165-168

<p style="text-align: right;">Page 165</p> <p>1 issued a release yesterday after the close</p> <p>2 indicating the Pringles transaction with PG would</p> <p>3 be delayed to the first half of 2012 to allow time</p> <p>4 to investigate an external communication the BOD</p> <p>5 received regarding potential fraudulent crop</p> <p>6 payment treatment by Diamond." Do you see that?</p> <p>7 A Yeah.</p> <p>8 Q Do you know whether anyone on -- anyone in your</p> <p>9 team had an opinion whether Diamond had actually</p> <p>10 -- strike that.</p> <p>11 Do you know whether anyone on your team</p> <p>12 had any opinion as to whether Diamond engaged in</p> <p>13 any fraud regarding its crop payments?</p> <p>14 MS. GORE: Objection. Asks for</p> <p>15 speculation.</p> <p>16 MR. WYLIE: I'll object. Vague as to</p> <p>17 timeframe.</p> <p>18 BY MR. CALOZA:</p> <p>19 Q You can answer.</p> <p>20 A Can you repeat it?</p> <p>21 Q Do you have any understanding as to whether anyone</p> <p>22 on your team believed that Diamond had engaged in</p> <p>23 any fraudulent crop payment treatment?</p> <p>24 A In terms of general recollection, I can't say</p> <p>25 whether anyone believed it. There was probably</p>	<p style="text-align: right;">Page 167</p> <p>1 have, the higher the probability.</p> <p>2 Q What is the significance of 45 percent float being</p> <p>3 sold short?</p> <p>4 A It's a high -- it's a -- in the overall</p> <p>5 distribution of short interest in public</p> <p>6 securities, 45 percent would be considered an</p> <p>7 outlier, in our opinion.</p> <p>8 Q And if someone is selling Diamond short, does that</p> <p>9 mean that they expect the price to fall?</p> <p>10 MR. WYLIE: Objection. Foundation.</p> <p>11 Calls for speculation.</p> <p>12 BY MR. CALOZA:</p> <p>13 Q Let me ask it a different way: What does it mean</p> <p>14 to sell a share -- to sell a share short?</p> <p>15 A At a minimum, you don't think it's going higher.</p> <p>16 Q Does it mean you expect the price to fall?</p> <p>17 A Not always.</p> <p>18 Q Do you have any reason to dispute that 45 percent</p> <p>19 of Diamond's float was sold short at this point in</p> <p>20 time?</p> <p>21 A I would -- I generally rely on the information of</p> <p>22 our analysts, so I believe it to be true.</p> <p>23 Q At the bottom of this entry, it says, "I have a</p> <p>24 hard" -- "I have a hard time believing the</p> <p>25 premeditated fraud accusation is true, but can't</p>
<p style="text-align: right;">Page 166</p> <p>1 people who were suspicious.</p> <p>2 Q Were you suspicious?</p> <p>3 A My recollection is I may have been.</p> <p>4 Q And is this in the November 2011 timeframe?</p> <p>5 A I would guess that it was.</p> <p>6 Q Now, the note says that, "This issue appears to be</p> <p>7 very similar to the short report put out by Off</p> <p>8 Wall Street several weeks ago," and then it goes</p> <p>9 on to say that "45 percent of Diamond's float is</p> <p>10 sold short." Do you see that?</p> <p>11 A Yes, yep.</p> <p>12 Q Do you know why Mr. Brower would have noted -- do</p> <p>13 you know why he noted that information?</p> <p>14 MS. GORE: Objection. Calls for</p> <p>15 speculation.</p> <p>16 BY MR. CALOZA:</p> <p>17 Q You may answer.</p> <p>18 A I think he thought it was material.</p> <p>19 Q And why would that be material?</p> <p>20 A Because it's lending credence to the fact pattern</p> <p>21 of potential fraud at Diamond.</p> <p>22 Q And how does that lend credence to the potential</p> <p>23 fact pattern of fraud?</p> <p>24 A Because there is no certainty, and all you can do</p> <p>25 is collect data points. The more data points you</p>	<p style="text-align: right;">Page 168</p> <p>1 rule it out. That said, I'll do a little more</p> <p>2 background gathering and would suggest we discuss</p> <p>3 the situation at lunch including the context of</p> <p>4 the Diamond-grower relationship, last year's</p> <p>5 walnut crop and the timing process of crop</p> <p>6 payments." Do you see that?</p> <p>7 A Yes.</p> <p>8 Q Do you know whether Mr. Brower did additional</p> <p>9 background gathering?</p> <p>10 A I can't recall for certain, but I assume if he</p> <p>11 said he was going to, he did.</p> <p>12 Q But you don't know any specifics; is that true?</p> <p>13 A As I sit here today, I cannot recall any</p> <p>14 specifics.</p> <p>15 Q The reference to discussing the situation at</p> <p>16 lunch, is that a reference to your team's internal</p> <p>17 team meetings?</p> <p>18 A Yes.</p> <p>19 Q Do you recall discussing Diamond at those team</p> <p>20 meetings in this timeframe?</p> <p>21 A I don't have a specific recollection.</p> <p>22 Q Do you have a general recollection?</p> <p>23 A I know it was discussed. I don't know if it was</p> <p>24 at those lunch meetings around that timeframe.</p> <p>25 Q Now, it refers to the context of the</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
169-172

<p style="text-align: right;">Page 169</p> <p>1 Diamond-grower relationship. Do you know whether</p> <p>2 Mr. Brower did any investigation of the</p> <p>3 Diamond-grower relationship?</p> <p>4 A Yes.</p> <p>5 Q And what did he -- what information did he gather?</p> <p>6 A I think he -- I believe, my recollection is, he</p> <p>7 did more research, firsthand research, to try to</p> <p>8 understand how the walnut industry works.</p> <p>9 Q Do you know what specific research he conducted?</p> <p>10 A I have a recollection of being on a call with him</p> <p>11 with an industry participant.</p> <p>12 Q What do you mean by "an industry participant"?</p> <p>13 A Someone who participates in the walnut industry.</p> <p>14 Q Do you know -- in what way did this individual</p> <p>15 participate in the walnut industry?</p> <p>16 A I believe it was -- they were a grower.</p> <p>17 Q Do you know whether it was a grower contracted to</p> <p>18 deliver walnuts to Diamond?</p> <p>19 A I can't recall specifically.</p> <p>20 Q Do you know when that conversation took place?</p> <p>21 A I can't recall specifically.</p> <p>22 Q Was there anyone else on -- who participated in</p> <p>23 this call other than Mr. Brower, yourself and this</p> <p>24 grower?</p> <p>25 A I don't recall specifically.</p>	<p style="text-align: right;">Page 171</p> <p>1 risk; in other words, the persistency in duration</p> <p>2 from the cash flows of the business from medium to</p> <p>3 high.</p> <p>4 Q Now, he says that he has recast the model to</p> <p>5 incorporate fine-tuning on the earnings model, a</p> <p>6 shift of scenario probability weightings and a</p> <p>7 shift to high risk from medium risk prior. Do you</p> <p>8 see that?</p> <p>9 A Yes, yep.</p> <p>10 Q Does -- well, in the first -- do you see where it</p> <p>11 says, "one intentional accounting fraud"?</p> <p>12 A Yes.</p> <p>13 Q And it says, "I'd put a low probability on this</p> <p>14 outcome, but the outcome would be a disaster."</p> <p>15 A Yes.</p> <p>16 Q Do you know why Mr. Brower put a low probability</p> <p>17 on intentional accounting fraud?</p> <p>18 A Because every analyst that I've ever worked with</p> <p>19 is hopeful.</p> <p>20 Q Do you have any understanding whether he believed</p> <p>21 there was accounting fraud at this time?</p> <p>22 MS. GORE: Objection. Calls for</p> <p>23 speculation.</p> <p>24 BY MR. CALOZA:</p> <p>25 Q You can answer.</p>
<p style="text-align: right;">Page 170</p> <p>1 Q Do you know the name of the grower?</p> <p>2 A I don't recall. And, I believe, it was a grower.</p> <p>3 I'm not 100 percent sure. It was a participant in</p> <p>4 the walnut industry.</p> <p>5 Q Is there anything else that you recall about this</p> <p>6 conversation between Mr. Brower, yourself and this</p> <p>7 grower?</p> <p>8 A Only in general terms.</p> <p>9 Q And what are those general terms?</p> <p>10 A He didn't like the management team at Diamond.</p> <p>11 Q Anything else?</p> <p>12 A No.</p> <p>13 Q Why didn't he like the management team?</p> <p>14 A I don't recall specifically.</p> <p>15 Q If you turn to the first page of Exhibit 55, there</p> <p>16 is an entry for November 2nd, 2011, written by</p> <p>17 Mr. Brower. Do you see that?</p> <p>18 A Yes.</p> <p>19 Q And it says -- he says that he has updated the PMV</p> <p>20 based on margin, tweaks and models after that note</p> <p>21 and a change in the risk from H to M. Do you see</p> <p>22 that?</p> <p>23 A Change in the risk from -- to H from M, yes.</p> <p>24 Q What does H refer to?</p> <p>25 A He increased our assessment of the business model</p>	<p style="text-align: right;">Page 172</p> <p>1 A I think "believed" is too strong of a word. I</p> <p>2 think suspicious, maybe.</p> <p>3 Q Well, if he were suspicious, is putting a low</p> <p>4 probability on that outcome consistent with a</p> <p>5 suspicion of accounting fraud?</p> <p>6 A Perhaps "suspicious" is too strong of a word.</p> <p>7 There's some word that defines not -- didn't</p> <p>8 believe, but didn't disbelieve either.</p> <p>9 Q If you continue to look in that paragraph, it</p> <p>10 says, "No Pringles transaction and a management</p> <p>11 house cleaning, stock get completely flogged with</p> <p>12 my best guess being down another 50 percent from</p> <p>13 here on trough EV/EBITDA multiple."</p> <p>14 A Uh-huh.</p> <p>15 Q Do you understand what he means by "my best guess</p> <p>16 being down another 50 percent from here"?</p> <p>17 A Yes. In conjunction with stock getting -- "get</p> <p>18 completely flogged," I believe he thinks that this</p> <p>19 stock will be down -- the public stock price will</p> <p>20 be down another 50 percent from wherever it was</p> <p>21 trading at that point.</p> <p>22 Q And then the next scenario under No. 2 is, "No</p> <p>23 fraud, but aggressive accounting and biz</p> <p>24 practices. Pringles transaction closes but</p> <p>25 delayed by a quarter." Do you see that?</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
173-176

<p style="text-align: right;">Page 173</p> <p>1 A Yes.</p> <p>2 Q And then he says, "This outcome is very possible</p> <p>3 and maybe even probable, but it is difficult to</p> <p>4 know with high confidence." Do you see that?</p> <p>5 A Yes.</p> <p>6 Q And then on the next page, AP1397, he says, "In</p> <p>7 this case, we're back to prior PMV less the costs</p> <p>8 incurred from this event." Do you see that?</p> <p>9 A Yep.</p> <p>10 Q Do you understand what that last sentence means?</p> <p>11 A The one that reads, "Maybe there's some penalty</p> <p>12 box time on sentiment, but new PMV would be 70 --</p> <p>13 approximately 72 versus the 83 new baseline PMV?"</p> <p>14 Q No, I meant, "We're back to prior PMV less the</p> <p>15 cost from this event." Do you understand what</p> <p>16 that means?</p> <p>17 A Roughly.</p> <p>18 Q And what's your understanding?</p> <p>19 A Maybe there's some penalty box time on sentiment,</p> <p>20 but new PMV would be 72 versus 83 new baseline</p> <p>21 PMV.</p> <p>22 Q So even in the event that there were no accounting</p> <p>23 fraud, his estimate of private market value would</p> <p>24 decrease; is that accurate?</p> <p>25 A I think he's saying if there was no fraud, but the</p>	<p style="text-align: right;">Page 175</p> <p>1 would be \$83; is that accurate?</p> <p>2 A Yes, yep.</p> <p>3 Q Do you know whether anyone calculated an estimated</p> <p>4 private market value taking into account the</p> <p>5 probabilities of these four scenarios?</p> <p>6 A I don't have any specific recollection. I believe</p> <p>7 if they did, it would be in here.</p> <p>8 Q At the top of Page 1396, there are one, two,</p> <p>9 three -- four entries related to selling Diamond</p> <p>10 stock. Do you see that?</p> <p>11 A Yep.</p> <p>12 Q And is that selling 21 basis points -- well, could</p> <p>13 you tell me what the first line under -- where it</p> <p>14 says "ACS sell," what that line means?</p> <p>15 A The very first line?</p> <p>16 Q Correct.</p> <p>17 A It says, "ACS sell Diamond 21 basis points, zero</p> <p>18 target." That means that I'm selling all of the</p> <p>19 stock out of the mid-cap portfolios.</p> <p>20 Q Now, my --</p> <p>21 A All of my stock -- all the stock that's in my sub</p> <p>22 portfolio.</p> <p>23 Q Now, if you look again at Mr. Brower's</p> <p>24 November 2nd entry, he says, "My recommendation is</p> <p>25 to stick with it given it's contracted to a base</p>
<p style="text-align: right;">Page 174</p> <p>1 result of whatever investigation was aggressive</p> <p>2 accounting and business practices, yes, that would</p> <p>3 result in a lower private market value. And the</p> <p>4 transaction was pushed one quarter further out</p> <p>5 than what he had in his current private market</p> <p>6 value.</p> <p>7 Q And then in scenario No. 3, it says, "Same as</p> <p>8 No. 2, but PG walks. No Pringles deal." Do you</p> <p>9 see that?</p> <p>10 A Yep.</p> <p>11 Q So in this scenario, there's no fraud, but</p> <p>12 aggressive accounting and business practices, and</p> <p>13 the Pringles deal does not go through; is that</p> <p>14 accurate?</p> <p>15 A Yes.</p> <p>16 Q And under this scenario, Mr. Brower's calculation</p> <p>17 of private market value is \$76; is that accurate?</p> <p>18 A Let me see. It looks like he has a few more puts</p> <p>19 and takes than what you stated, but yet since the</p> <p>20 net of it is the new PMV would be 76.</p> <p>21 Q And the fourth scenario, "The investigation's</p> <p>22 quickly resolved and Pringles closes in January</p> <p>23 of 2012." Do you see that?</p> <p>24 A Yes.</p> <p>25 Q And under that scenario, private market value</p>	<p style="text-align: right;">Page 176</p> <p>1 garden level." Do you see that in the second</p> <p>2 paragraph?</p> <p>3 A Yes, yep.</p> <p>4 Q Do you know whether Mr. Brower's --</p> <p>5 A But where it says "but the risk is obviously</p> <p>6 high"?</p> <p>7 Q Correct. Do you know whether Mr. Brower's</p> <p>8 recommendation changed between November 2nd and</p> <p>9 November 11?</p> <p>10 A It probably did based on discussion, because he</p> <p>11 said, "As new info becomes available, or upon</p> <p>12 further discussion and reflection, we can</p> <p>13 certainly decide to pull the rip cord and move</p> <p>14 on."</p> <p>15 Q And do you have any recollection of further</p> <p>16 discussion and reflection between November 2nd and</p> <p>17 November 11?</p> <p>18 A I don't have any recollection of reflection. I</p> <p>19 have recollection of deciding to sell the stock.</p> <p>20 Q When did you decide to sell the stock?</p> <p>21 A According to this, on November 11th.</p> <p>22 Q Was there --</p> <p>23 A At 11:17 a.m., it looks like, or 11:23, I guess.</p> <p>24 Q Was that a team discussion and decision?</p> <p>25 A I have no specific recollection. It looks like it</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.April 04, 2013
177-180

<p>Page 177</p> <p>1 may have been since everybody sold.</p> <p>2 Q At the time you sold the stock on November 11, did</p> <p>3 you believe that Diamond's -- that Diamond had</p> <p>4 committed any intentional accounting fraud?</p> <p>5 MR. WYLIE: Object to the extent it</p> <p>6 calls for a legal conclusion.</p> <p>7 BY MR. CALOZA:</p> <p>8 Q You can answer.</p> <p>9 A I cannot say specifically that I believed they</p> <p>10 committed fraud. I thought -- my recollection is</p> <p>11 I thought there was a substantial probability they</p> <p>12 may have.</p> <p>13 Q Do you know whether or not anyone on your team</p> <p>14 disagreed with that conclusion?</p> <p>15 A I don't recall.</p> <p>16 Q Do you know whether the conversation with</p> <p>17 Mr. Brower, yourself and the grower occurred</p> <p>18 between November 2nd and November 11?</p> <p>19 A I don't have a specific -- I have a vague</p> <p>20 recollection that it happened before November 2nd,</p> <p>21 but I don't know for sure.</p> <p>22 Q So is your vague recollection -- do you know --</p> <p>23 strike that.</p> <p>24 Do you have any recollection of whether</p> <p>25 that conversation took place before Mr. Brower</p>	<p>Page 179</p> <p>1 November 3rd, 2011?</p> <p>2 A Yes.</p> <p>3 Q And if you look on the first page of Exhibit 62,</p> <p>4 the file name is Diamond workbook 2011, 11 of 3.</p> <p>5 Do you see that?</p> <p>6 A 2011 -- yep.</p> <p>7 Q Do you have any reason to believe that this</p> <p>8 analysis was not conducted on November 3, 2011?</p> <p>9 A No, I don't have any reason not to.</p> <p>10 Q And what is the expected value as of November 3rd,</p> <p>11 2011?</p> <p>12 A I think it's the same as we just discussed, \$84.</p> <p>13 Q Now, this analysis was conducted after Artisan</p> <p>14 became aware of the allegations of improper</p> <p>15 accounting; is that correct?</p> <p>16 A If that's the sequence, yes.</p> <p>17 Q Well, do you know when -- well, this analysis is</p> <p>18 dated October 3, and Mr. Brower's notes are --</p> <p>19 regarding the investigation are dated</p> <p>20 November 1st -- sorry, November 2nd. Do you see</p> <p>21 that in Exhibit No. 55?</p> <p>22 A Yes, yep.</p> <p>23 Q Do you have any reason to believe that the</p> <p>24 analysis in Exhibit 62 did not take place after</p> <p>25 Mr. Brower became aware of the allegations of</p>
<p>Page 178</p> <p>1 submitted this entry on November 2nd?</p> <p>2 A I don't.</p> <p>3 MR. CALOZA: Can you mark this as</p> <p>4 Exhibit 62?</p> <p>5 (Exhibit No. 62 is marked.)</p> <p>6 BY MR. CALOZA:</p> <p>7 Q Mr. Stephens, you've been handed a document marked</p> <p>8 Exhibit 62 Bates stamped -- and the first page is</p> <p>9 Bates stamped AP0001774. And I will represent to</p> <p>10 you that this is an Excel sheet that -- or</p> <p>11 printout of tabs from an Excel sheet that was</p> <p>12 produced by Artisan to Diamond in native form, and</p> <p>13 it includes the pitch tab, the PMV tab, the PMV</p> <p>14 adjusted tab, consolidated P&L tab and segment P&L</p> <p>15 tab. If you look at the third page of this</p> <p>16 document, there is an expected value chart. Do</p> <p>17 you see that?</p> <p>18 A Yeah.</p> <p>19 Q And this is, again, a calculation of Artisan's</p> <p>20 estimated private market value. Do you see that?</p> <p>21 A Yep.</p> <p>22 Q Now, what is the expected private market value as</p> <p>23 of November -- or do you see that this -- strike</p> <p>24 that.</p> <p>25 Do you see that this chart is dated</p>	<p>Page 180</p> <p>1 accounting fraud?</p> <p>2 A I have no reason to believe it didn't, but I can't</p> <p>3 confirm it did.</p> <p>4 Q And when Mr. Brower analyzes private market value</p> <p>5 on November 3rd, his weighted private market value</p> <p>6 is \$84; is that correct?</p> <p>7 A Yes.</p> <p>8 Q Do you know, does this analysis take into account</p> <p>9 the probability of accounting fraud?</p> <p>10 A I don't know specifically. I believe it's</p> <p>11 consistent with what we already talked about when</p> <p>12 we discussed recasting his model and coming up</p> <p>13 with an \$83 private market value. I think it's</p> <p>14 just a rounding error. So I think it's the same</p> <p>15 as what we just talked about.</p> <p>16 Q Now, in -- if you look on Exhibit 55 under</p> <p>17 "intentional accounting fraud" where Mr. Brower</p> <p>18 refers to a 50 percent loss from here, is that a</p> <p>19 reference to a 50 percent loss on the market</p> <p>20 price, or -- of Diamond, or is it a 50 percent</p> <p>21 loss on Artisan's calculated estimated private</p> <p>22 market value?</p> <p>23 A I believe he's saying it's both, because he</p> <p>24 references a trough enterprise EBITDA multiple on</p> <p>25 the old Diamond EBITDA.</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.April 04, 2013
181-184

<p style="text-align: right;">Page 181</p> <p>1 Q So the -- so are you saying that he thinks the</p> <p>2 market price would fall by half and the expected</p> <p>3 private market value would fall by half from 84 to</p> <p>4 42?</p> <p>5 A I can't say specifically, but that's my</p> <p>6 interpretation.</p> <p>7 Q So even in the scenario of intentional accounting</p> <p>8 fraud, the calculation would be that private</p> <p>9 market value would be \$42; is that accurate?</p> <p>10 A On that single case which he considers to be a low</p> <p>11 probability, I would generally agree with your</p> <p>12 conclusion.</p> <p>13 Q That is the worst outcome out of the four</p> <p>14 scenarios; is that right?</p> <p>15 A The way I read it, yes.</p> <p>16 Q So taking into account all four scenarios, would</p> <p>17 you agree that weighted private market value would</p> <p>18 be in excess of \$42?</p> <p>19 MR. WYLIE: Objection. Calls for</p> <p>20 speculation.</p> <p>21 BY MR. CALOZA:</p> <p>22 Q You can answer.</p> <p>23 A If I did the math on a probability weighted basis,</p> <p>24 my guess is I would come up with higher than 42,</p> <p>25 if 42 is really what the private market value</p>	<p style="text-align: right;">Page 183</p> <p>1 A Not beyond an assumption.</p> <p>2 Q Do you see on the bottom left it says "grower,</p> <p>3 quote, tight versus loose"?</p> <p>4 A Where is that? I'm sorry.</p> <p>5 Q It is on the left margin at the bottom of Page</p> <p>6 AP331?</p> <p>7 A I see "tight versus loose." I can't make out...</p> <p>8 Q Do you have any understanding what that refers to?</p> <p>9 A None.</p> <p>10 Q Do you know anyone at Artisan who would be able to</p> <p>11 testify about this document?</p> <p>12 A Not specifically. It's the same group that I</p> <p>13 referenced earlier.</p> <p>14 Q And, again, you did not discuss this deposition</p> <p>15 with any of those individuals that you referenced</p> <p>16 earlier; is that right?</p> <p>17 A I did not, no.</p> <p>18 MR. CALOZA: Can you mark this as</p> <p>19 Exhibit 64?</p> <p>20 (Exhibit No. 64 is marked.)</p> <p>21 BY MR. CALOZA:</p> <p>22 Q Mr. Stephens, you've been handed a document</p> <p>23 Exhibit 64, Bates stamped AP0001817 to AP0001818.</p> <p>24 A Uh-huh.</p> <p>25 Q Do you recognize this document?</p>
<p style="text-align: right;">Page 182</p> <p>1 would be, yeah.</p> <p>2 Q Do you know if there were any other analyses of</p> <p>3 private market value after November 3rd, 2011?</p> <p>4 A I don't know.</p> <p>5 MR. CALOZA: Could you mark that as</p> <p>6 Exhibit 63?</p> <p>7 (Exhibit No. 63 is marked.)</p> <p>8 BY MR. CALOZA:</p> <p>9 Q Mr. Stephens, you've been handed a document marked</p> <p>10 Exhibit 63, Bates stamped AP331 to AP332. Do you</p> <p>11 recognize this document?</p> <p>12 A I saw it in the file.</p> <p>13 Q Do you know whose handwriting this is?</p> <p>14 A I don't.</p> <p>15 Q And do you have any understanding of the context</p> <p>16 in which Exhibit 63 was created?</p> <p>17 A Not specifically, no.</p> <p>18 Q Do you have any understanding of whether this</p> <p>19 reflects any conversation regarding Diamond?</p> <p>20 A I don't know if it's a conversation or just a</p> <p>21 worksheet.</p> <p>22 Q Do you see the reference to pre-harvest?</p> <p>23 A Yes.</p> <p>24 Q Do you have any understanding of what that refers</p> <p>25 to?</p>	<p style="text-align: right;">Page 184</p> <p>1 A Yes.</p> <p>2 Q What is it?</p> <p>3 A I believe it's in reference to the phone call that</p> <p>4 I recalled earlier with a participant in the</p> <p>5 walnut industry.</p> <p>6 Q Does this document refresh your recollection of</p> <p>7 when that phone call took place?</p> <p>8 A I don't see anything on it that references a date.</p> <p>9 Q Do you know --</p> <p>10 A Just a -- I'm looking through it.</p> <p>11 Q Let me know when you've had a chance to review the</p> <p>12 document.</p> <p>13 A I don't see anything that gives me a specific</p> <p>14 idea. It looks like it was after 2010 sometime.</p> <p>15 Q Do you know if these are your notes?</p> <p>16 A They are not my notes.</p> <p>17 Q Do you know if they're Mr. Brower's notes?</p> <p>18 A I don't know if they're Mr. Brower's notes.</p> <p>19 Q Do you know whose notes these might be if they're</p> <p>20 not yours or Mr. Brower's?</p> <p>21 A One of the group that I mentioned earlier.</p> <p>22 Q Did anyone else from that group participate in</p> <p>23 this phone call with the grower?</p> <p>24 A I have no specific recollection.</p> <p>25 Q You have no reason to believe that another team</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.April 04, 2013
185-188

<p style="text-align: right;">Page 185</p> <p>1 member participated in the call other than</p> <p>2 yourself and Mr. Brower; is that accurate?</p> <p>3 A No. I have many reasons to believe that others</p> <p>4 did participate. I just can't recall if they did</p> <p>5 or not.</p> <p>6 Q Do you know how Artisan identified a grower to</p> <p>7 speak with?</p> <p>8 A I don't.</p> <p>9 Q Do you have any recollection about the context in</p> <p>10 which this call took place?</p> <p>11 A Generally, yes.</p> <p>12 Q And what's your general recollection?</p> <p>13 A We wanted to understand better the walnut payment</p> <p>14 issue and asked Rod to talk to people to try to</p> <p>15 find someone within the industry that could</p> <p>16 explain it to us on a firsthand basis.</p> <p>17 Q Do you remember how long this conversation lasted?</p> <p>18 A Not specifically.</p> <p>19 Q Do you have a general recollection?</p> <p>20 A Generally, less than 45 minutes.</p> <p>21 Q Do you know whether the information conveyed to</p> <p>22 you by this grower was publicly available at that</p> <p>23 time?</p> <p>24 MR. WYLIE: Object to foundation.</p> <p>25 THE WITNESS: I'm having a hard time</p>	<p style="text-align: right;">Page 187</p> <p>1 tons"?</p> <p>2 A "485 will not be made. Maybe 430 to 460." Yep.</p> <p>3 Q Do you have any understanding of what that means?</p> <p>4 A Not specifically.</p> <p>5 Q Do you have a general recollection?</p> <p>6 A Not -- no. I don't know what type of walnut or...</p> <p>7 Q Do you know if that refers to the walnut crop?</p> <p>8 A I don't. I don't know if it's his crop. I don't</p> <p>9 know if it's the total crop. I don't know if it's</p> <p>10 Diamond's crop. I don't know. I don't recall. I</p> <p>11 did at the time, I'm sure.</p> <p>12 Q If you look to the next paragraph, it says "China</p> <p>13 had a big crop, so not buying as much." Do you</p> <p>14 see that?</p> <p>15 A Yep.</p> <p>16 Q How would the fact that China is not buying as</p> <p>17 much affect the market price of walnuts, if there</p> <p>18 is one?</p> <p>19 A I don't know.</p> <p>20 MR. WYLIE: Objection. Foundation.</p> <p>21 Speculation.</p> <p>22 BY MR. CALOZA:</p> <p>23 Q Well, in -- would you expect if -- strike that.</p> <p>24 At the bottom of the page, it says,</p> <p>25 "Three responses, Kool-Aid drinkers, probably 30-</p>
<p style="text-align: right;">Page 186</p> <p>1 with the definition of "publicly." I think it was</p> <p>2 well-known within the walnut industry. How many</p> <p>3 other people in the general public would care, I</p> <p>4 don't know.</p> <p>5 BY MR. CALOZA:</p> <p>6 Q Did you speak to any other growers?</p> <p>7 A Not that I recall.</p> <p>8 Q If you turn to AP1818, it says halfway down,</p> <p>9 "Contractually able to do this." Do you know what</p> <p>10 that refers to?</p> <p>11 A Not specifically, no.</p> <p>12 Q Do you have a general recollection?</p> <p>13 A It comes after "smartest guy in the room," so I'm</p> <p>14 not sure what they were referring to.</p> <p>15 Q It says, "Competitive market price based on market</p> <p>16 conditions." Do you know what that refers to?</p> <p>17 A Not specifically. I believe it has to do with</p> <p>18 walnut prices.</p> <p>19 Q Do you have any understanding of the relationship</p> <p>20 between the market price and market conditions?</p> <p>21 A For walnuts?</p> <p>22 Q Correct.</p> <p>23 A I did at one time. I don't know.</p> <p>24 Q Do you see -- do you see where it says, "Forecast</p> <p>25 was 485K, will not be made. Maybe 430 to 460K</p>	<p style="text-align: right;">Page 188</p> <p>1 to 40 percent of growers, up yours, and then</p> <p>2 splitting their deliveries, 40- to 50 percent of</p> <p>3 growers." Do you see that?</p> <p>4 A Yep.</p> <p>5 Q Do you have any understanding of what this means?</p> <p>6 A I believe so.</p> <p>7 Q And what is that understanding?</p> <p>8 A My recollection is that Kool-Aid drinkers are</p> <p>9 those that will go along with whatever Diamond is</p> <p>10 offering them, which is probably 30 to 40 percent</p> <p>11 of the growers. "Up yours" are people who were</p> <p>12 tired of dealing with Diamond, and the third,</p> <p>13 "splitting their deliveries," 30 to 40 percent of</p> <p>14 growers are doing both.</p> <p>15 Q Do you have any understanding of whether Diamond</p> <p>16 had discretion to set walnut prices?</p> <p>17 A I have no specific recollection. Prices to -- for</p> <p>18 the overall market, or prices to the customers</p> <p>19 they bought from? Or the suppliers they bought</p> <p>20 from?</p> <p>21 Q The suppliers they bought from.</p> <p>22 A I have no specific recollection.</p> <p>23 Q Do you have a general recollection?</p> <p>24 A I don't.</p> <p>25 Q On page AP 1817, towards the bottom it says,</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
189-192

<p style="text-align: right;">Page 189</p> <p>1 "Contract: Definitely growers out there that are 2 died in the wool Diamond-growers that want to 3 security." Do you see that? 4 A I'm sorry, where was it? 5 Q Towards the bottom of the page, four lines up. 6 A "Contract: Definitely growers out there that are 7 died in the wool Diamond-growers that want to 8 security." 9 Q Do you have any idea what that means? 10 A I have a general understanding. 11 Q And what's your understanding? 12 A That there's contracted -- Diamond has growers 13 under contract that like the security -- they're 14 loyal to Diamond, and they like the security of 15 those contracts. 16 Q And what security does a contract with Diamond 17 provide? 18 A I don't know specifically. 19 Q At the top of AP 1818, it says, "Retail biz is at 20 an advantage in down years, disadvantage in up 21 years." Do you see that? 22 A Yes. 23 Q Do you have any understanding what that means? 24 A I have a general understanding. 25 Q And what is that general understanding?</p>	<p style="text-align: right;">Page 191</p> <p>1 disclosure of the company's investigation into 2 walnut payments? 3 MR. WYLIE: I will, again, object. It 4 misstates his testimony and it misstates the 5 content of the document. 6 BY MR. CALOZA: 7 Q You can answer. 8 A No, not that I recall. 9 Q Do you know, prior to this conversation with a 10 grower noted in Exhibit 64, had Artisan ever 11 reached out to any of Diamond's walnut growers? 12 A I think you'd asked me that earlier, and I 13 testified no, that I didn't believe that we had. 14 Q Okay. You were handed Exhibit 65, which is a 15 document Bates marked AP 352 through AP 366. Do 16 you recognize this document? 17 A To the best of my recollection, I've never seen 18 this before. This wasn't in our file, was it? 19 Q This was a document produced to Diamond by 20 Artisan. And if you look at page AP 354 -- 21 A I'm sorry, which page? 22 Q AP 354. 23 A Yep. 24 Q It lists -- or it has details about a 2006 crop, 25 additional delivery payment by Diamond Foods, Inc.</p>
<p style="text-align: right;">Page 190</p> <p>1 A That in years of weak walnut prices, they earn the 2 spread by being able to sell nuts at retail. And 3 in years where walnut prices are strong, I would 4 guess that there's a squeeze. 5 Q Do you know whether there was a squeeze in 2011? 6 A I don't recall. 7 MR. CALOZA: Can you mark this as 8 Exhibit 65. 9 (Exhibit No. 65 is marked.) 10 BY MR. CALOZA: 11 Q Actually, before I ask about Exhibit 65, I have 12 one more question about Exhibit 64. Are you aware 13 of any other investors who discussed the walnut 14 accounting allegations with growers? 15 A With growers? 16 MR. WYLIE: I'll -- 17 BY MR. CALOZA: 18 Q With any grower. 19 MR. WYLIE: -- object. Misstates his 20 prior testimony and misstates the contents of the 21 document. 22 BY MR. CALOZA: 23 Q I'll rephrase. Are you aware of any other 24 investors who discussed Diamond's payments to 25 growers -- with a Diamond grower after the</p>	<p style="text-align: right;">Page 192</p> <p>1 Do you see that? 2 A 354, I'm sorry. What was it? 3 Q This page lists details regarding a 2006 crop, 4 additional delivery payment by Diamond Foods, 5 Inc. -- 6 A Yep. 7 Q -- do you see that? 8 A Yeah, yep. 9 Q Do you have any reason to -- do you have any 10 reason to believe that this document was not part 11 of your investment team's research file on 12 Diamond? 13 A Actually, I do. 14 Q And why is that? 15 A Because I didn't see it in the review material. 16 Q And in pulling together material to review, did 17 you -- you testified that you didn't discuss this 18 deposition with anyone on your team, is that 19 right? 20 A Except my assistant. 21 Q And where did you -- how did you pull together 22 material to review? 23 MR. WYLIE: I object to the extent it 24 calls for the disclosure of attorney-client 25 communications.</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.April 04, 2013
193-196

<p style="text-align: right;">Page 193</p> <p>1 BY MR. CALOZA:</p> <p>2 Q Did you -- is there a hard copy research file</p> <p>3 containing notes on Diamond?</p> <p>4 A I have not seen the original file. I've only seen</p> <p>5 a replication of the file, but, yes, I believe</p> <p>6 there is one.</p> <p>7 Q Did you review any documents not provided to you</p> <p>8 by counsel, by your counsel?</p> <p>9 A No.</p> <p>10 Q And is the only basis -- well, you previously</p> <p>11 testified that you have a reason to doubt that</p> <p>12 this is part of your team's research file, because</p> <p>13 it was not a document that you had seen in</p> <p>14 preparation for this deposition, is that correct?</p> <p>15 A I'm not sure if those are the exact words I used.</p> <p>16 I just said I hadn't -- I had reason to doubt that</p> <p>17 it was -- that it was in our file, because I</p> <p>18 didn't see it. It doesn't mean that it's not. It</p> <p>19 just means I didn't see it.</p> <p>20 Q And is that the only basis for your doubt, that</p> <p>21 you did not previously see it?</p> <p>22 A Yes.</p> <p>23 MR. CALOZA: Can you mark this as</p> <p>24 Exhibit 66.</p> <p>25 (Exhibit No. 66 is marked.)</p>	<p style="text-align: right;">Page 195</p> <p>1 supply to you?</p> <p>2 Q In its original form?</p> <p>3 A I don't, no.</p> <p>4 Q Do you have any understanding of when Artisan</p> <p>5 obtained this document?</p> <p>6 A I don't.</p> <p>7 Q Do you have any understanding of whether other</p> <p>8 investors have access to this document?</p> <p>9 A I don't.</p> <p>10 MR. CALOZA: Could you mark this as</p> <p>11 Exhibit 67.</p> <p>12 (Exhibit No. 67 is marked.)</p> <p>13 BY MR. CALOZA:</p> <p>14 Q Mr. Stephens, you've been handed a document marked</p> <p>15 Exhibit 67 Bates stamped AP 1 through AP 16. Do</p> <p>16 you recognize this document?</p> <p>17 A It looks like a document that I reviewed -- that I</p> <p>18 have reviewed, yes.</p> <p>19 Q Is this the operative investment management</p> <p>20 agreement between Artisan and MPERS?</p> <p>21 MR. WYLIE: I'll object to the extent it</p> <p>22 calls for a legal conclusion.</p> <p>23 BY MR. CALOZA:</p> <p>24 Q You can answer.</p> <p>25 A Yes, I believe it is.</p>
<p style="text-align: right;">Page 194</p> <p>1 MR. WYLIE: We've been going almost an</p> <p>2 hour and a half again, and if you're switching to</p> <p>3 another document, it might be a good time to take</p> <p>4 a break.</p> <p>5 MR. CALOZA: No, I'm -- I'm almost to</p> <p>6 another topic, so let me just keep going. Oh,</p> <p>7 actually, if we're running out of tape, why don't</p> <p>8 we take a break now.</p> <p>9 THE VIDEOGRAPHER: This is the end of</p> <p>10 Disc No. 3. We are off the record at 3:57 p.m.</p> <p>11 (A brief recess is taken.)</p> <p>12 THE VIDEOGRAPHER: We are back on the</p> <p>13 record at 4:07 p.m.</p> <p>14 BY MR. CALOZA:</p> <p>15 Q Mr. Stephens, prior to the break you were handed a</p> <p>16 document marked Exhibit 66 --</p> <p>17 A Yep.</p> <p>18 Q -- Bates numbered AP 336 through AP 347. Do you</p> <p>19 recognize this document?</p> <p>20 A Unfortunately, I do not.</p> <p>21 Q Do you have -- this is a document that was</p> <p>22 produced to you -- Diamond by Artisan. Do you</p> <p>23 have any understanding of how Artisan obtained</p> <p>24 this document?</p> <p>25 A To supply to you or to -- in its original form, to</p>	<p style="text-align: right;">Page 196</p> <p>1 Q Are you aware if there are any amendments to this</p> <p>2 agreement that are not contained in this</p> <p>3 Exhibit 67?</p> <p>4 A I'm not aware of any amendments.</p> <p>5 Q Does this document specify Artisan's investment</p> <p>6 strategy for the MPERS account?</p> <p>7 A Does it specify our investment strategy?</p> <p>8 Q Yes.</p> <p>9 A I don't --</p> <p>10 Q And let me point you to Addendum III on AP 8.</p> <p>11 A Addendum III on AP 8. I believe it states our</p> <p>12 investment objectives and guidelines, but does not</p> <p>13 spell out our strategy.</p> <p>14 Q Does Artisan Partners have more than one Mid-Cap</p> <p>15 Growth strategy?</p> <p>16 A No. This is the one Mid-Cap Growth strategy.</p> <p>17 Q And does this Exhibit 67 specify any restrictions</p> <p>18 on investing by Artisan on behalf of MPERS?</p> <p>19 A I believe it does.</p> <p>20 Q Other than the restrictions specified -- well,</p> <p>21 what restrictions are there on investments on</p> <p>22 MPERS' behalf?</p> <p>23 A They're listed here. Did you want me to read</p> <p>24 them?</p> <p>25 Q Are they listed under paragraph 2.3?</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.April 04, 2013
197-200

<p style="text-align: right;">Page 197</p> <p>1 A I believe they're listed throughout.</p> <p>2 Q Other than the restrictions in Exhibit 67, are</p> <p>3 there any other restrictions on which investments</p> <p>4 Artisan may make on behalf of MPERS?</p> <p>5 A I'm not -- I'm not a lawyer, so I can't say. But</p> <p>6 we do agree to comply with our investment</p> <p>7 philosophy and processes as described to MPERS and</p> <p>8 their consultant.</p> <p>9 Q If you turn to Addendum I on AP 6. The investment</p> <p>10 agreement specifies certain minimum performance</p> <p>11 standards. Is that accurate?</p> <p>12 A I think it states an expectation, yes.</p> <p>13 Q And one of those minimum performance standards is</p> <p>14 consistent above-median performance in the Mid-Cap</p> <p>15 Growth manager universe, is that accurate?</p> <p>16 A I believe that that's -- one of their</p> <p>17 expectations, yes.</p> <p>18 Q And what do you understand that expectation to</p> <p>19 require?</p> <p>20 A Well, I understand the "above-median performance."</p> <p>21 I don't understand their definition of</p> <p>22 "consistent."</p> <p>23 Q What does "above-median performance" mean in</p> <p>24 the -- well, let me take that back. Can you</p> <p>25 explain what your understanding of that sentence</p>	<p style="text-align: right;">Page 199</p> <p>1 A I think in relation to these other expectations.</p> <p>2 It's not a mutually exclusive statement is my</p> <p>3 understanding of it.</p> <p>4 Q Well, it is requiring Artisan -- it is an</p> <p>5 expectation that Artisan will more often than not</p> <p>6 exceed the Russell Midcap Growth Index, is that</p> <p>7 correct?</p> <p>8 A At this point --</p> <p>9 MR. WYLIE: Objection. Asked and</p> <p>10 answered.</p> <p>11 THE WITNESS: Yeah.</p> <p>12 BY MR. CALOZA:</p> <p>13 Q You can go ahead and answer.</p> <p>14 A I believe it to be one consideration of three that</p> <p>15 Mississippi PERS reviews.</p> <p>16 MR. CALOZA: Can you mark this as</p> <p>17 Exhibit 68.</p> <p>18 (Exhibit No. 68 is marked.)</p> <p>19 BY MR. CALOZA:</p> <p>20 Q Mr. Stephens, you've been handed an exhibit marked</p> <p>21 68 bearing Bates numbers AP 2188 through AP 2238.</p> <p>22 Do you recognize this exhibit?</p> <p>23 A It looks like a document that I reviewed.</p> <p>24 Q What is it?</p> <p>25 A To the best of my understanding, it's the</p>
<p style="text-align: right;">Page 198</p> <p>1 means?</p> <p>2 A I believe it to mean in more measurable periods</p> <p>3 than not, we should be greater than the 50th</p> <p>4 percentile of performance versus the Mid-Cap</p> <p>5 Growth manager universe as provided by the MPERS</p> <p>6 consultant and investment consultant.</p> <p>7 Q And does that mean that more often than not,</p> <p>8 Artisan is expected to outperform the general</p> <p>9 market?</p> <p>10 A No.</p> <p>11 Q Well, look at the next sentence, "Performance</p> <p>12 which consistently exceeds the Russell Midcap</p> <p>13 Growth Index by 200 basis points net of fees." Do</p> <p>14 you have any understanding of what that</p> <p>15 requirement or what that expectation means?</p> <p>16 A Performance which consistently exceeds -- which</p> <p>17 "consistently" to me means in more measurable</p> <p>18 periods than not, exceeds the rest of the Mid-Cap</p> <p>19 Growth basis by 200 basis points net of fees.</p> <p>20 Q Now, does that expectation require Artisan to more</p> <p>21 often than not outperform the market?</p> <p>22 A It doesn't require us to do anything. It's an</p> <p>23 expectation.</p> <p>24 Q Is that an expectation that Artisan will more</p> <p>25 often than not outperform the market?</p>	<p style="text-align: right;">Page 200</p> <p>1 Mississippi PERS Internal Investment Manager</p> <p>2 Standard Operating Procedures manual.</p> <p>3 Q And does your investment team consider the</p> <p>4 information in this operating manual in</p> <p>5 determining which investments to make on behalf of</p> <p>6 MPERS?</p> <p>7 A I can't speak to the whole document in detail. I</p> <p>8 can say that where there is a specific guideline</p> <p>9 that's been communicated to us by PERS, we do</p> <p>10 follow that, yes.</p> <p>11 Q Can you please turn to page 26 of document, which</p> <p>12 is -- which bears Bates stamp AP 2214. I'll give</p> <p>13 you a moment just to review that page.</p> <p>14 (Pause in testimony.)</p> <p>15 THE WITNESS: Okay.</p> <p>16 BY MR. CALOZA:</p> <p>17 Q Now, this page lists factors that may be grounds</p> <p>18 for investment managers to be placed on a watch</p> <p>19 list or terminated, does it not?</p> <p>20 A Without studying the detail, I think, generally,</p> <p>21 yes, that's what it says.</p> <p>22 Q And they include both qualitative and quantitative</p> <p>23 factors, is that right?</p> <p>24 A That's correct, yes.</p> <p>25 Q And the quantitative factors pertain primarily to</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.April 04, 2013
201-204

<p style="text-align: right;">Page 201</p> <p>1 performance, is that correct?</p> <p>2 A There's both an absolute performance and a</p> <p>3 relative performance criteria, according to this.</p> <p>4 Q And if -- if an investment manager -- is it your</p> <p>5 understanding that an investment manager that</p> <p>6 fails to meet these performance requirements is</p> <p>7 subject to termination?</p> <p>8 A No.</p> <p>9 MR. WYLIE: Objection. Foundation.</p> <p>10 Calls for speculation.</p> <p>11 THE WITNESS: That is not my</p> <p>12 understanding.</p> <p>13 BY MR. CALOZA:</p> <p>14 Q What is your understanding of the purpose of these</p> <p>15 quantitative factors?</p> <p>16 A My understanding is that the board, at its</p> <p>17 discretion, can place a manager on the watch list</p> <p>18 or terminate a manager at any time with 30-days</p> <p>19 notice.</p> <p>20 Q What is your understanding of the reasons why an</p> <p>21 investment manager might be placed on the watch</p> <p>22 list or terminated?</p> <p>23 A According to this, there's both qualitative</p> <p>24 factors and quantitative factors.</p> <p>25 MR. CALOZA: Mark this as Exhibit 69.</p>	<p style="text-align: right;">Page 203</p> <p>1 sure what the bucket includes specifically. But</p> <p>2 my general knowledge of it is it's for third-party</p> <p>3 research providers.</p> <p>4 Q And if you look further down, there's a reference</p> <p>5 to proprietary research. Do you have any</p> <p>6 understanding of what that means?</p> <p>7 A Actually, I don't.</p> <p>8 Q Could that be to Artisan's research?</p> <p>9 A I would assume that it is, yes.</p> <p>10 Q Are you familiar with -- well, strike that.</p> <p>11 Other than the explanations set forth in</p> <p>12 Exhibit 55, which was the printout of Artisan's</p> <p>13 DDM system, do you have any understanding for the</p> <p>14 bases of any of the trades in this document?</p> <p>15 A I didn't understand that question.</p> <p>16 Q Other than what appears in Exhibit 55 --</p> <p>17 A Yes.</p> <p>18 Q -- which is the printout of Artisan's interim</p> <p>19 research and trading system, do you have any</p> <p>20 understanding of the rationale for the trades</p> <p>21 listed in Exhibit 69?</p> <p>22 A Yes, in general.</p> <p>23 Q And what is that understanding?</p> <p>24 A Exhibit 55 is simply the communication from the</p> <p>25 investment management team to our trading and</p>
<p style="text-align: right;">Page 202</p> <p>1 (Exhibit No. 69 is marked.)</p> <p>2 BY MR. CALOZA:</p> <p>3 Q Mr. Stephens, you've been handed a document marked</p> <p>4 Exhibit 69, which the first page of that document</p> <p>5 bears the Bates stamp AP 17. And I will represent</p> <p>6 to you that this is a printout of a spreadsheet</p> <p>7 produced by Artisan to Diamond in native Excel</p> <p>8 format. Do you recognize this document?</p> <p>9 A Yes.</p> <p>10 Q What is it?</p> <p>11 A It looks like a trade blotter for the Diamond --</p> <p>12 I'm sorry, for the Mississippi PERS portfolio.</p> <p>13 Q And when you say "trade blotter," what does that</p> <p>14 mean?</p> <p>15 A It -- I believe it to be a report of the buys and</p> <p>16 sells and dividends, stock splits and other</p> <p>17 transactions in the Mississippi PERS account.</p> <p>18 Q If you look on the first page of the printout</p> <p>19 after the cover page, the right columns -- the</p> <p>20 right column says, "Com purpose." What does that</p> <p>21 refer to?</p> <p>22 A Commission purpose.</p> <p>23 Q And if you look in the eighth row, it says</p> <p>24 "Third-party research." What does that mean?</p> <p>25 A I don't -- I did not create the title, so I'm not</p>	<p style="text-align: right;">Page 204</p> <p>1 compliance area. The transactions that are listed</p> <p>2 on the trade blotter are the actual -- my</p> <p>3 understanding, are the actual daily fills within</p> <p>4 the portfolio as well as other transactions such</p> <p>5 as dividends and stock splits.</p> <p>6 Q Do you have any understanding of -- well, let's</p> <p>7 start with the first trade on June 3, 2011. Do</p> <p>8 you have any understanding of the basis for that</p> <p>9 trade?</p> <p>10 MR. WYLIE: Objection. Vague as to the</p> <p>11 term "basis."</p> <p>12 BY MR. CALOZA:</p> <p>13 Q Mr. Stephens, do you recall the information you</p> <p>14 considered on -- do you recall the information you</p> <p>15 considered when determining to buy Diamond on</p> <p>16 June 3, 2011?</p> <p>17 A Not a specific recollection, but in general, I</p> <p>18 think it's referenced in Exhibit 55.</p> <p>19 Q What about the purchase on June 6, 2011?</p> <p>20 A June 6 is likely a continuation of the fills for</p> <p>21 the original ticket that was entered on June 3.</p> <p>22 Q Other than what appears in Exhibit 55, do you have</p> <p>23 any specific recollection regarding the</p> <p>24 information considered by your investment team in</p> <p>25 purchasing any of the securities listed in</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
205-208

<p style="text-align: right;">Page 205</p> <p>1 Exhibit 69?</p> <p>2 A Other than what's contained in 55, do I have any</p> <p>3 specific knowledge for each and every trade on</p> <p>4 this document?</p> <p>5 Q Correct.</p> <p>6 A I don't think I can answer that.</p> <p>7 Q Well, we can go through transaction by</p> <p>8 transaction. Do you have any specific knowledge</p> <p>9 of the information you considered in purchasing</p> <p>10 stock on June 7, 2011?</p> <p>11 MR. WYLIE: Objection. Assumes facts</p> <p>12 not in evidence. Misstates prior testimony.</p> <p>13 BY MR. CALOZA:</p> <p>14 Q You can answer.</p> <p>15 A I believe that that information is contained in</p> <p>16 Exhibit 55.</p> <p>17 Q What about June 8, 2011?</p> <p>18 MR. WYLIE: Same objection.</p> <p>19 THE WITNESS: I would guess that it's</p> <p>20 contained in Exhibit 55.</p> <p>21 BY MR. CALOZA:</p> <p>22 Q June 14, 2011?</p> <p>23 A In order to accurately answer the question, I</p> <p>24 would need more information than what you've</p> <p>25 provided to me.</p>	<p style="text-align: right;">Page 207</p> <p>1 contained in Exhibit 55.</p> <p>2 Q What about the August 2, 2011 purchase?</p> <p>3 A August 2, 2011. Yes, I believe I can reasonably</p> <p>4 assume that it was contained in Exhibit 55.</p> <p>5 Q What about August 9, 2011?</p> <p>6 A Yes, it's directly referenced.</p> <p>7 Q In Exhibit 55?</p> <p>8 A Yes.</p> <p>9 Q What about the August 11, 2011 purchase?</p> <p>10 A I can reasonably assume that it's contained in</p> <p>11 Exhibit 55.</p> <p>12 THE VIDEOGRAPHER: Excuse me. We need</p> <p>13 to go off the record. We are off the record at</p> <p>14 4:33 p.m.</p> <p>15 (Discussion held off the record.)</p> <p>16 THE VIDEOGRAPHER: We are back on the</p> <p>17 record at 4:36 p.m.</p> <p>18 BY MR. CALOZA:</p> <p>19 Q Could you state the information your team relied</p> <p>20 on in purchasing Diamond securities on August 12,</p> <p>21 2011?</p> <p>22 A On August 12. And the question again?</p> <p>23 Q What information did your team rely on in</p> <p>24 purchasing Diamond on August 12, 2011?</p> <p>25 A I can reasonably assume it was in Exhibit 55.</p>
<p style="text-align: right;">Page 206</p> <p>1 Q So sitting here, can you explain the information</p> <p>2 you considered in purchasing securities -- Diamond</p> <p>3 securities on June 14, 2011?</p> <p>4 A It's my assumption that it's the same instruction</p> <p>5 that I gave to our trading desk with the original</p> <p>6 order on June 3.</p> <p>7 Q What about June 17, 2011?</p> <p>8 A Again, that is my assumption.</p> <p>9 Q June 22, 2011?</p> <p>10 A You've not provided me with the appropriate</p> <p>11 information to give you the answer to that.</p> <p>12 Q But sitting here today, can you testify as to the</p> <p>13 information your team considered in purchasing</p> <p>14 Diamond securities on June 22, 2011?</p> <p>15 A I believe that I can.</p> <p>16 Q And what is that information?</p> <p>17 A It's contained in Exhibit 55.</p> <p>18 Q What about June 28, 2011?</p> <p>19 A I believe, to the best of my ability, I can.</p> <p>20 Q And what is that?</p> <p>21 A It's contained in Exhibit 55.</p> <p>22 Q Other than what is in Exhibit 55, can you say the</p> <p>23 basis -- the information that your team relied on</p> <p>24 in purchasing Diamond securities on July 27, 2011?</p> <p>25 A I think I can reasonably assume that it's</p>	<p style="text-align: right;">Page 208</p> <p>1 Q And August 15, 2011?</p> <p>2 A I can reasonably assume it is contained in</p> <p>3 Exhibit 55.</p> <p>4 Q August 19, 2011?</p> <p>5 A I can reasonably assume it's contained in</p> <p>6 Exhibit 55.</p> <p>7 Q September 27, 2011?</p> <p>8 A It's directly referenced in Exhibit 55.</p> <p>9 Q September 28, 2011?</p> <p>10 A September 28. I can reasonably assume it's</p> <p>11 contained in Exhibit 55.</p> <p>12 Q What information did your team rely on in selling</p> <p>13 Diamond securities on September 30, 2011?</p> <p>14 A I cannot say specifically, but, in general, I</p> <p>15 believe it was a client withdrawal.</p> <p>16 Q And October 6, 2011, what information did your</p> <p>17 team rely on in purchasing securities on that</p> <p>18 date -- purchasing Diamond securities on that</p> <p>19 date?</p> <p>20 A I'm sorry. October 6?</p> <p>21 Q Correct, October 6, 2011.</p> <p>22 A I should have brought my reading glasses. That's</p> <p>23 directly referenced in Exhibit 55.</p> <p>24 Q What about October 18, 2011?</p> <p>25 A I can reasonably assume it's contained in</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
209-212

<p style="text-align: right;">Page 209</p> <p>1 Exhibit 55.</p> <p>2 Q October 21, 2011?</p> <p>3 A I'm sorry. October 21?</p> <p>4 Q Correct. 2011.</p> <p>5 A Yeah, it's directly referenced in Exhibit 55.</p> <p>6 Q What information did your team rely on in selling</p> <p>7 Diamond securities on November 11, 2011?</p> <p>8 A On November 11?</p> <p>9 Q Correct.</p> <p>10 A It's directly referenced in Exhibit 55.</p> <p>11 Q What about November 14, 2011?</p> <p>12 A I can reasonably assume it's contained in</p> <p>13 Exhibit 55.</p> <p>14 Q What about November 15, 2011?</p> <p>15 A I can reasonably assume that it's in reference to</p> <p>16 the trade instruction contained in Exhibit 55.</p> <p>17 Q And November 16, 2011?</p> <p>18 A I can reasonably assume it's related to the trade</p> <p>19 instruction contained in Exhibit 55.</p> <p>20 MS. GORE: I would like to state that</p> <p>21 the same objections stated by Mr. Wylie with</p> <p>22 reference to the June 3, 6 and 7, 2011 trades,</p> <p>23 apply to each of the dates in Exhibit 69.</p> <p>24 BY MR. CALOZA:</p> <p>25 Q Now, other than the information contained in</p>	<p style="text-align: right;">Page 211</p> <p>1 ever discussed in any meeting of his team?</p> <p>2 MR. CALOZA: Mr. Stephens just referred</p> <p>3 to a body of conversations stretching over</p> <p>4 multiple years. I'm simply asking if he recalls</p> <p>5 any specific content from those conversations.</p> <p>6 MR. WYLIE: I'll object to form. Vague.</p> <p>7 BY MR. CALOZA:</p> <p>8 Q Do you understand the question?</p> <p>9 MR. WYLIE: And I also object that it</p> <p>10 goes beyond the scope of the subject matter on</p> <p>11 which the deponent was designated to testify.</p> <p>12 BY MR. CALOZA:</p> <p>13 Q Do you understand the question?</p> <p>14 A No. Can you give me an example of specific</p> <p>15 knowledge?</p> <p>16 Q Well, you referred to conversations stretching</p> <p>17 over multiple years as a possible source of</p> <p>18 information regarding the basis on which Artisan</p> <p>19 traded in Diamond.</p> <p>20 What I'm asking you about is whether you</p> <p>21 recall any specific conversations regarding</p> <p>22 information not already contained in Exhibit 55</p> <p>23 that was used in determining whether to trade in</p> <p>24 Diamond.</p> <p>25 A I recall that there were specific conversations.</p>
<p style="text-align: right;">Page 210</p> <p>1 Exhibit 55, are you aware of any specific</p> <p>2 information relied upon by your team in executing</p> <p>3 any of the trades contained in Exhibit 69?</p> <p>4 A In addition to the information included in</p> <p>5 Exhibit --</p> <p>6 Q 55.</p> <p>7 A -- 55?</p> <p>8 Q Yes.</p> <p>9 A Am I aware of any additional information?</p> <p>10 Q Correct.</p> <p>11 A Not specifically. But, in general, the nature of</p> <p>12 the conversation and the history of the</p> <p>13 conversation may have contributed.</p> <p>14 Q What conversation are you referring to?</p> <p>15 A Our conversations -- research conversations as it</p> <p>16 relates to Diamond Foods.</p> <p>17 Q But sitting here, you cannot point to any specific</p> <p>18 conversations?</p> <p>19 A I can point to a body of conversations stretching</p> <p>20 over multiple years. A cumulative knowledge.</p> <p>21 Q Can you recall any specific content from those</p> <p>22 conversations?</p> <p>23 A Not specific --</p> <p>24 MR. WYLIE: Objection to form. Are you</p> <p>25 asking whether he can recall anything that was</p>	<p style="text-align: right;">Page 212</p> <p>1 I don't recall the specifics of those</p> <p>2 conversations. The cumulative effect of which led</p> <p>3 to the judgment to sell Diamond, which we are</p> <p>4 provided in our investment contract.</p> <p>5 MR. WYLIE: Excuse me. Off the record.</p> <p>6 THE VIDEOGRAPHER: We are on the record.</p> <p>7 MR. WYLIE: On the record. How long</p> <p>8 have we been on the record?</p> <p>9 THE VIDEOGRAPHER: A little over six</p> <p>10 hours.</p> <p>11 MR. CALOZA: Can you mark this as 70?</p> <p>12 (Exhibit No. 70 is marked.)</p> <p>13 BY MR. CALOZA:</p> <p>14 Q Mr. Stephens, you've been handed a document marked</p> <p>15 Exhibit 70, Bates stamped AP229 through AP312. Do</p> <p>16 you recognize this document?</p> <p>17 A In general terms, yes.</p> <p>18 Q What is it?</p> <p>19 A It appears to be a portfolio update summary for</p> <p>20 the period ending -- for the month-end June 30,</p> <p>21 2011, and potentially the portfolio appraisal for</p> <p>22 MPERS and a transaction history for MPERS.</p> <p>23 Q Do you know whether this document was provided to</p> <p>24 MPERS?</p> <p>25 A I don't know specifically, but I would assume that</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
213-216

<p style="text-align: right;">Page 213</p> <p>1 it was.</p> <p>2 Q Under commentary on page AP229 in the second line</p> <p>3 it says, "We outperform the Russell Mid Cap Growth</p> <p>4 Index due to strong individual stock selection."</p> <p>5 Do you see that statement?</p> <p>6 A I do see that statement, yep.</p> <p>7 Q Do you have any basis to disagree with that</p> <p>8 statement?</p> <p>9 A "We outperform Russell Mid Cap Growth Index."</p> <p>10 Well, I don't like it.</p> <p>11 Q But do you have a reason to disagree with that --</p> <p>12 the statement that Artisan "outperformed the</p> <p>13 Russell Mid Cap Growth Index due to strong</p> <p>14 individual stock selection"? Is that an</p> <p>15 inaccurate statement?</p> <p>16 A Well, the out-performance appears to be factually</p> <p>17 correct as listed at the top of the page. Whether</p> <p>18 it was from stock selection, I can't tell you from</p> <p>19 my recollection. But I would believe it to be</p> <p>20 true if we stated it.</p> <p>21 MR. CALOZA: Can you mark this as</p> <p>22 Exhibit 71.</p> <p>23 (Exhibit No. 71 is marked.)</p> <p>24 BY MR. CALOZA:</p> <p>25 Q Mr. Stephens, you've been handed a document marked</p>	<p style="text-align: right;">Page 215</p> <p>1 well as their -- I believe their portfolio</p> <p>2 holdings and transaction history.</p> <p>3 MR. CALOZA: Could you mark this as</p> <p>4 Exhibit 73.</p> <p>5 (Exhibit No. 73 is marked.)</p> <p>6 BY MR. CALOZA:</p> <p>7 Q Mr. Stephens, you've been handed a document marked</p> <p>8 Exhibit 73 bearing Bates stamps AP 66 through</p> <p>9 AP 90. Do you recognize this document?</p> <p>10 A Not specifically, but, in general, I believe so.</p> <p>11 Q And what is it?</p> <p>12 A I assume that it's a month-end summary of the U.S.</p> <p>13 Mid-Cap Growth portfolio provided to the Public</p> <p>14 Employees Retirement System of Mississippi as well</p> <p>15 as their portfolio holdings and a transaction</p> <p>16 summary.</p> <p>17 MR. CALOZA: Can you mark this as</p> <p>18 Exhibit 74.</p> <p>19 (Exhibit No. 74 is marked.)</p> <p>20 BY MR. CALOZA:</p> <p>21 Q You've been handed a document marked Exhibit 74</p> <p>22 bearing Bates stamps AP 43 through AP 65. Do you</p> <p>23 recognize this document?</p> <p>24 A Not specifically, but, in general, yes.</p> <p>25 Q What is this document?</p>
<p style="text-align: right;">Page 214</p> <p>1 Exhibit 71 Bates stamped AP116 through AP228. Do</p> <p>2 you recognize this document?</p> <p>3 A Not specifically, but, in general, yes.</p> <p>4 Q What is it?</p> <p>5 A It appears to be a month-end summary of the</p> <p>6 Artisan Mid-Cap Growth strategy provided to the</p> <p>7 Public Employees' Retirement System of Mississippi</p> <p>8 and includes their portfolio holdings and</p> <p>9 transaction history.</p> <p>10 MR. CALOZA: Can you mark this as</p> <p>11 Exhibit 72.</p> <p>12 (Exhibit No. 72 is marked.)</p> <p>13 BY MR. CALOZA:</p> <p>14 Q And do you know whether Exhibit 71 was provided to</p> <p>15 MPERS?</p> <p>16 A I don't know specifically, but I assume that it</p> <p>17 was.</p> <p>18 Q You've been handed a document marked Exhibit 72</p> <p>19 bearing Bates stamps AP91 through AP115. Do you</p> <p>20 recognize this document?</p> <p>21 A Not specifically, but, in general, I believe so.</p> <p>22 Q And what is it?</p> <p>23 A It appears to be a month-end summary for the</p> <p>24 Mid-Cap Growth strategy provided to the Public</p> <p>25 Employees' Retirement System of Mississippi, as</p>	<p style="text-align: right;">Page 216</p> <p>1 A I assume it's a month-end summary for the U.S.</p> <p>2 Mid-Cap Growth portfolio provided to the Public</p> <p>3 Employees Retirement System of Mississippi for the</p> <p>4 month ended October 31, 2011, and includes their</p> <p>5 portfolio holdings, a summary of the transactions.</p> <p>6 MR. CALOZA: Can you mark this as</p> <p>7 Exhibit 75.</p> <p>8 (Exhibit No. 75 is marked.)</p> <p>9 BY MR. CALOZA:</p> <p>10 Q Mr. Stephens, you've been provided a document</p> <p>11 marked Exhibit 75 bearing Bates stamp AP 21</p> <p>12 through AP 42. Do you recognize this document?</p> <p>13 A Not specifically, but, in general, yes.</p> <p>14 Q What is it?</p> <p>15 A I believe it's a portfolio summary for the U.S.</p> <p>16 Mid-Cap Growth portfolio provided to the Public</p> <p>17 Employees' Retirement System of Mississippi dated</p> <p>18 November 30, 2011. And it contains their</p> <p>19 portfolio holdings and transaction summary.</p> <p>20 Q If you look at the last sentence of the second</p> <p>21 paragraph under "commentary" on page AP 21. It</p> <p>22 says, "Positive stock selection results helped our</p> <p>23 portfolio outperform the Mid-Cap Growth Index."</p> <p>24 Do you see that?</p> <p>25 A Where is it? Sorry.</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
217-220

<p style="text-align: right;">Page 217</p> <p>1 Q The last sentence of the second paragraph under</p> <p>2 "commentary" on page AP 21.</p> <p>3 A "Positive stock selection results helped our</p> <p>4 portfolio outperform the Mid-Cap Growth Index."</p> <p>5 Yes.</p> <p>6 Q Is that an accurate statement?</p> <p>7 A I don't know.</p> <p>8 Q Do you have any reason to believe that it is</p> <p>9 inaccurate?</p> <p>10 A No.</p> <p>11 Q And if you look on the second paragraph from the</p> <p>12 bottom starting, "Broadcom and Garden holdings</p> <p>13 Diamond Foods were among our weaker performances"</p> <p>14 -- if you look at the second paragraph on the</p> <p>15 bottom of AP21, the paragraph starting, "Broadcom</p> <p>16 and Garden holdings, Diamond foods, were among our</p> <p>17 weaker performances."</p> <p>18 The last sentence of that</p> <p>19 paragraph says, "We sold Diamond Foods, a branded</p> <p>20 food company specializing in nuts and snack</p> <p>21 products amid questions surrounding its accounting</p> <p>22 for payments to walnut growers, which threatened</p> <p>23 the company's ability to close its planned</p> <p>24 acquisition of the Pringles brand from Procter &</p> <p>25 Gamble." Do you see that?</p>	<p style="text-align: right;">Page 219</p> <p>1 Q You've been handed a document marked Exhibit 76</p> <p>2 bearing Bates numbers AP325 through AP330. Do you</p> <p>3 recognize this document?</p> <p>4 A In general, yes, but not specifically.</p> <p>5 Q What is it?</p> <p>6 A I believe it to be a letter to Lorrie Tingle, the</p> <p>7 chief investment officer of Public Employees'</p> <p>8 Retirement System of Mississippi, reviewing the</p> <p>9 performance of the Artisan U.S. Mid-Cap growth</p> <p>10 strategy for the second quarter of 2011 and</p> <p>11 providing a current perspective and positioning of</p> <p>12 the portfolio and the market.</p> <p>13 Q If you look on page 329, AP329, which is page 5 of</p> <p>14 the document, you'll see your name. Is that your</p> <p>15 signature?</p> <p>16 A Yes.</p> <p>17 Q Did you help author this document?</p> <p>18 A I believe that I had input into the document, yes.</p> <p>19 Q Do you see on page 325, the first page, the last</p> <p>20 sentence under "investing environment and</p> <p>21 performance review," it says, "Strong relative</p> <p>22 stock selection helped our portfolio best both the</p> <p>23 Russell Midcap and Russell Midcap growth indexes."</p> <p>24 Do you see that?</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 218</p> <p>1 A Yep.</p> <p>2 Q How significant was the effect of -- strike that.</p> <p>3 What do you understand that sentence to</p> <p>4 mean?</p> <p>5 A "We sold Diamond Foods, a branded food company</p> <p>6 specializing in nuts and snack products amid</p> <p>7 questions surrounding its accounting for payments</p> <p>8 to walnut growers, which threatened the company's</p> <p>9 ability to close its planned acquisition of the</p> <p>10 Pringles brand from Procter & Gamble."</p> <p>11 Q At the time you sold Diamond Foods, did you</p> <p>12 believe that Diamond had incorrectly accounted for</p> <p>13 payments to walnut growers?</p> <p>14 A Repeat the question.</p> <p>15 Q At the time you sold Diamond Foods, did you</p> <p>16 believe that Diamond had incorrectly accounted for</p> <p>17 payments to walnut growers?</p> <p>18 A No, I did not believe that. I thought it was</p> <p>19 possible.</p> <p>20 Q But you were not certain?</p> <p>21 A There is no certainty.</p> <p>22 MR. CALOZA: Can you mark this as</p> <p>23 Exhibit 76.</p> <p>24 (Exhibit No. 76 is marked.)</p> <p>25 BY MR. CALOZA:</p>	<p style="text-align: right;">Page 220</p> <p>1 Q Is that an accurate statement?</p> <p>2 A I believe that it is.</p> <p>3 Q And does stock -- does "stock selection" there</p> <p>4 refer to selecting stocks with the characteristics</p> <p>5 you described earlier, namely: Franchise</p> <p>6 characteristics, valuation you understand and</p> <p>7 accelerating profits?</p> <p>8 A I'm not sure that's the definition of it here. I</p> <p>9 think it's -- says, "Relative to all other stocks</p> <p>10 we could have selected, ours were stronger for</p> <p>11 that period."</p> <p>12 Q But you select stocks on the basis of franchise</p> <p>13 characteristics, valuation that you understand and</p> <p>14 accelerating profits, is that correct?</p> <p>15 MR. WYLIE: Objection. Misstates prior</p> <p>16 testimony and asked and answered.</p> <p>17 BY MR. CALOZA:</p> <p>18 Q You can answer.</p> <p>19 A We attempt, to the best of our ability, to do that</p> <p>20 with an imperfect record.</p> <p>21 MR. CALOZA: Can you mark this as</p> <p>22 Exhibit 77.</p> <p>23 (Exhibit No. 77 is marked.)</p> <p>24 BY MR. CALOZA:</p> <p>25 Q Mr. Stephens, you've been handed a document</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
221-224

<p style="text-align: right;">Page 221</p> <p>1 marked Exhibit 77 bearing Bates stamps AP319 2 through AP 324. Do you recognize this document? 3 A Not specifically, but, in general, yes. 4 Q What is the document? 5 A I believe it to be a letter sent to Lorrie Tingle, 6 the chief investment officer of the Public 7 Employees' Retirement System of Mississippi. 8 MR. CALOZA: Can you mark this as 9 Exhibit 78. 10 (Exhibit No. 78 is marked.) 11 BY MR. CALOZA: 12 Q Mr. Stephens, you've been handed a document marked 13 Exhibit 78 bearing Bates numbers AP313 through 14 AP 318. Do you recognize this document? 15 A Not specifically, but in general, yes. 16 Q And what is it? 17 A I believe it to be a letter to Lorrie Tingle, the 18 chief investment officer of the Public Employees' 19 Retirement System of Mississippi. 20 Q And if you'll turn to the second page, which is 21 AP 314, the last paragraph discusses Diamond 22 Foods. Do you see it? 23 A Yes. 24 Q And it discloses that Artisan sold its position 25 among questions concerning its -- Diamond's</p>	<p style="text-align: right;">Page 223</p> <p>1 regarding the reasons for purchasing Diamond? 2 A I have no specific knowledge. 3 Q At any time following -- rather, do you have any 4 general knowledge whether Artisan discussed its 5 reasons for purchasing Diamond with Mississippi 6 PERS? 7 A The only general knowledge I would have is we 8 normally describe our new positions in these 9 letters to clients, but I don't have the 10 appropriate time frame in front of me to be able 11 to tell you for certain. 12 Q Has Mississippi PERS ever asked you for the 13 basis -- rather, has Mississippi PERS ever asked 14 you for your rationale for purchasing Diamond 15 stock? 16 A "You" being -- 17 Q "You" being Artisan. 18 MR. WYLIE: I'll object as being beyond 19 the scope of the topics in which the deponent was 20 designated to testify. 21 BY MR. CALOZA: 22 Q You can answer. 23 A I can't say. 24 Q What about with respect to your specific 25 investment team?</p>
<p style="text-align: right;">Page 222</p> <p>1 accounting for payments to walnut growers, which 2 threatened the company's ability to close its 3 planned acquisition of the Pringles brand from 4 Procter & Gamble. 5 Did you -- other than in this letter, 6 have you ever discussed the sale of Diamond stock 7 with Mississippi PERS? 8 A I have no recollection. Actually, I think, 9 according to this, we did. It seems to me on 10 November 30, we gave this to them. 11 Q Are you referring to Exhibit -- 12 A 75. 13 Q Okay. Other than in Exhibit 75 and Exhibit 78, 14 have you ever discussed with Mississippi PERS the 15 reasons for selling Diamond stock? 16 A Me individually or our firm collectively? 17 Q Your firm collectively. 18 A I can't say specifically. I would assume that our 19 client service people had discussed it, but I 20 don't know that for certain. 21 Q So you have no specific knowledge of that 22 occurring? 23 A I have no specific knowledge of that. 24 Q Do you have any specific knowledge of any 25 conversation between Artisan and Mississippi PERS</p>	<p style="text-align: right;">Page 224</p> <p>1 A I can't say. 2 Q Do you know -- 3 A It's not that I can't say. I'm sorry, I answered 4 that incorrectly. I don't know. I can assume 5 they may have asked. 6 Q But you -- do you have any specific knowledge that 7 they did ask? 8 MR. WYLIE: Objection. Beyond the scope 9 of the subject matter on which the deponent was 10 designated to testify. 11 BY MR. CALOZA: 12 Q You can answer. 13 A I have no specific knowledge that they asked. 14 Q Has Mississippi PERS ever directed your investment 15 team to buy or sell specific securities? 16 A To buy or sell specific securities? 17 Q Correct. 18 A It depends on the definition. If they give us 19 additional contributions to their portfolio, it's 20 their expectation that we will buy the securities 21 in the portfolio for them to match the account 22 they already have. 23 And, conversely, if they redeem money 24 from their portfolio, there's an expectation that 25 we will sell securities pro rata for them. So, in</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
225-228

<p style="text-align: right;">Page 225</p> <p>1 that way, yes, they have given us specific</p> <p>2 instructions.</p> <p>3 Q Other than in the context of additional</p> <p>4 contributions or redemptions, has Mississippi PERS</p> <p>5 ever directed your investment team to buy or sell</p> <p>6 securities?</p> <p>7 A Not that I can recall, no.</p> <p>8 Q And that includes Diamond securities?</p> <p>9 A To the best of my knowledge, that's correct.</p> <p>10 MR. CALOZA: I don't have any additional</p> <p>11 questions at this time.</p> <p>12 MS. GORE: I have no questions.</p> <p>13 THE WITNESS: Are you sure you just</p> <p>14 don't want to ask them? Swing one?</p> <p>15 MR. CALOZA: Does counsel on the phone</p> <p>16 have any follow-up questions? Is anyone --</p> <p>17 MS. IGRA: Naomi Igra for Michael</p> <p>18 Mendes. I have a couple of questions. Are you</p> <p>19 hearing me all right?</p> <p>20 MR. CALOZA: We are now.</p> <p>21 THE WITNESS: Yep, yep.</p> <p>22 EXAMINATION</p> <p>23 BY MS. IGRA:</p> <p>24 Q Are you aware of any contacts or communications</p> <p>25 with Michael Mendes, in particular?</p>	<p style="text-align: right;">Page 227</p> <p>1 MS. IGRA: I'm sorry. I am having some</p> <p>2 trouble with the phone connection. I did not hear</p> <p>3 you.</p> <p>4 MR. WYLIE: By "RFP," do you mean the</p> <p>5 subpoena directed to Artisan Partners?</p> <p>6 MS. IGRA: Yes.</p> <p>7 THE WITNESS: And the question was, the</p> <p>8 documents we produced were in response to that?</p> <p>9 I --</p> <p>10 BY MS. IGRA:</p> <p>11 Q Are you -- as far as you know, any documents in</p> <p>12 your possession that refer to Michael Mendes,</p> <p>13 would they have been produced in response to the</p> <p>14 subpoena?</p> <p>15 MR. WYLIE: I'll object as being beyond</p> <p>16 the scope of the subject matter on which the</p> <p>17 deponent was designated to testify.</p> <p>18 BY MS. IGRA:</p> <p>19 Q Okay. Thank you. That's all.</p> <p>20 A Okay.</p> <p>21 MR. ROSENBLIT: This is Avi Rosenblit.</p> <p>22 I have no questions.</p> <p>23 THE VIDEOGRAPHER: This is the</p> <p>24 conclusion of the deposition --</p> <p>25 MR. WYLIE: If I can just go on the</p>
<p style="text-align: right;">Page 226</p> <p>1 A By --</p> <p>2 MR. WYLIE: Object to form. Do you mean</p> <p>3 contacts between Artisan and Michael Mendes?</p> <p>4 MS. IGRA: Yes.</p> <p>5 THE WITNESS: And, specifically,</p> <p>6 Artisan, the team that I represent?</p> <p>7 BY MS. IGRA:</p> <p>8 Q Yes.</p> <p>9 A In my -- and your question is; am I aware of any</p> <p>10 contacts specifically?</p> <p>11 Q Yeah, or communications with Michael Mendes, in</p> <p>12 particular.</p> <p>13 A Only as referenced in document -- or Exhibit 55</p> <p>14 where they mentioned he was present in meetings.</p> <p>15 Q There are no other contacts or communications of</p> <p>16 which you are specifically aware?</p> <p>17 A None that I am specifically aware.</p> <p>18 Q To the best of your knowledge, are documents</p> <p>19 referring to Michael Mendes, were they produced in</p> <p>20 response to Diamond's RFP?</p> <p>21 A Diamond's RFP? I'm not familiar with the term.</p> <p>22 Q Their request for production.</p> <p>23 MR. WYLIE: You mean the subpoena? I</p> <p>24 don't know if you heard me. I asked for</p> <p>25 clarification. Did you mean --</p>	<p style="text-align: right;">Page 228</p> <p>1 record briefly. I don't have any questions.</p> <p>2 Artisan Partners would like to designate the</p> <p>3 transcript as confidential subject to the</p> <p>4 opportunity to review and de-designate as provided</p> <p>5 in the protective order previously entered in this</p> <p>6 case.</p> <p>7 THE VIDEOGRAPHER: This is the</p> <p>8 conclusion of the deposition. We are off the</p> <p>9 record at 5:16 p.m.</p> <p>10 (Proceedings concluded at 5:16 p.m.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

ANDREW STEPHENS 30(b)(6)
IN RE DIAMOND FOODS, INC.

April 04, 2013
229-231

Page 229	Page 231
<p>1 STATE OF WISCONSIN) 2) SS: COUNTY OF MILWAUKEE) 3 4 5 I, JESSICA R. WAACK, a Certified 6 Realtime Reporter, Registered Diplomate Reporter, 7 Certified Shorthand Reporter and Notary Public in and 8 for the State of Wisconsin, do hereby certify that the 9 above video examination of ANDREW STEPHENS was recorded 10 by me on April 4, 2013, and reduced to writing under my 11 personal direction. 12 I further certify that I am not a 13 relative or employee or attorney or counsel of any of 14 the parties, or a relative or employee of such attorney 15 or counsel, or financially interested directly or 16 indirectly in this action. 17 In witness whereof I have hereunder set 18 my hand and affixed my seal of office at Milwaukee, 19 Wisconsin, on April 5, 2013. 20 21 _____ 22 Notary Public 23 In and for the State of Wisconsin 24 25 My Commission Expires: September 1, 2013.</p>	<p>1 2 PAGE NO. CORRECTIONS 3 LINE NO. DESCRIPTION 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
Page 230	
<p>1 STATE OF) 2) SS: COUNTY OF) 3 4 I, ANDREW STEPHENS, do hereby certify 5 that I have read the foregoing transcript of 6 proceedings, taken April 4, 2013, at Brown & Jones 7 Reporting, Inc., 735 North Water Street, Suite M185, 8 Milwaukee, Wisconsin, and the same is true and correct 9 except for the list of corrections noted on the annexed 10 page. 11 Dated at 12 this day of , 2013. 13 14 15 16 ANDREW STEPHENS 17 18 Subscribed and sworn to before me 19 this day of , 2013. 20 21 22 Notary Public 23 My Commission Expires: 24 25</p>	